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Financial reports and audited financial statements, and reports of the Board of Auditors

Concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the annual financial period 2016

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, pursuant to resolution 47/211, a concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors on its audit of accounts for the year ended 31 December 2016.

* A/72/150.

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Letters of transmittal

Letter dated 30 June 2017 from the Chair of the Board of Auditors addressed to the President of the General Assembly

I have the honour to transmit to you a concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the annual financial period 2016.

(*Signed*) Shashi Kant **Sharma**
Comptroller and Auditor General of India
Chair of the Board of Auditors

Letter dated 30 June 2017 from the Chair of the Board of Auditors addressed to the Secretary-General

I have the honour to transmit to you the concise summary of the principal findings, conclusions and recommendations contained in the reports prepared by the Board of Auditors for the General Assembly at its seventy-second session.

(*Signed*) Shashi Kant **Sharma**
Comptroller and Auditor General of India
Chair of the Board of Auditors

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Abbreviations

ICT	Information and communications technology
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Tribunal for the Former Yugoslavia
IPSAS	International Public Sector Accounting Standards
ITC	International Trade Centre
OIOS	Office of Internal Oversight Services
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFPA	United Nations Population Fund
UN-Habitat	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office for Project Services
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNU	United Nations University
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women

Concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the annual financial period 2016

Summary

The General Assembly, in its resolution 47/211, invited the Board of Auditors to report in a consolidated fashion on major deficiencies in programme and financial management and cases of inappropriate or fraudulent use of resources, together with the measures taken by the relevant entities. The findings and conclusions included in the present report relate to the common themes and major issues identified in the Board's reports addressed to the General Assembly on 20 entities (see annex I). The contents of the Board's reports to the Security Council and other governing bodies are not summarized herein.

The present report summarizes the major issues, including on performance matters, reported in the separate reports on the United Nations entities submitted to the General Assembly. Most of the issues contained in the present report are of a cross-cutting nature on the predetermined audit themes based on established audit risks and special requests by the Advisory Committee on Administrative and Budgetary Questions.

I. Scope and mandate

1. The present report includes findings and conclusions identified in the Board's reports in 2016, addressed to the General Assembly, on 20 entities,[1] including the United Nations peacekeeping operations[2] (see annex I). The Board has continued to provide information on cross-entity issues, as requested by the Chair of the Advisory Committee on Administrative and Budgetary Questions on 27 January 2014 and reiterated on 19 February 2015, and on the understanding that the Committee still finds the presentation useful (see A/70/380).

2. The Board has therefore continued to report on thematic topics, key trends and cross-entity issues in its entity-level reports and included commentary in the present summary report on financial performance, cash and investment management, budget management, employee benefit liabilities, fraud awareness and prevention, implementing partners, preparedness for implementation of the Sustainable Development Goals, human resource management, procurement and contract management and travel management.

II. Overall matters for the United Nations

A. Audit opinions

3. The Board of Auditors audited the financial statements and reviewed the operations of 20 organizations (see annex I), in accordance with General Assembly resolution 74 (I) of 7 December 1946.

4. All 20 entities received unqualified audit opinions. (For an explanation of the types of audit opinions, see annex II.) Of those, ICTR and ICTY received an unqualified opinion with an emphasis of matter.

5. It is the third year that ICTR has received an emphasis of matter. This was to draw attention to the fact that it had ceased to be a going concern on 31 December 2015. The Tribunal finalized the last case under its mandate and completed amalgamation of the remaining activities with the International Residual Mechanism for Criminal Tribunals as at 1 January 2017. Operations of ICTY are expected to cease in 2017, following the completion of the remaining two cases. Liquidation activities would take place subsequently, concluding the progressive amalgamation into the Residual Mechanism.

6. The Board has issued short-form reports reflecting its audit opinions, together with long-form reports, which contain detailed findings and recommendations arising from each audit.

7. This year was the first year of preparation of financial statements through Umoja for nine entities.[3] Unlike in the previous year, the Board has received all the financial statements in a timely manner. This indicates that Umoja has stabilized for the preparation of financial statements.

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[1] ICTR has been omitted from the analysis in various places, as it is amalgamated in the International Residual Mechanism for Criminal Tribunals.

[2] To better support the General Assembly in its governance role, the Board includes United Nations peacekeeping operations in the present report to provide a more comprehensive picture. The peacekeeping operations have an annual financial cycle ending 30 June; therefore, the figures related to those operations are as at that date unless otherwise indicated.

[3] United Nations (Vol. I), United Nations peacekeeping operations, UNEP, UN-Habitat, UNODC, ITC, ICTR, ICTY, International Residual Mechanism for Criminal Tribunals.

8. The Board noted continuous improvement in the application of IPSAS in the preparation of financial statements across the United Nations system. Specific weaknesses were highlighted in the respective audit reports of the entities.

B. Financial performance

Out-turn

9. Comparison of net results of financial performance of the entities at the end of 2015 and 2016 are presented in table 1. The Board observed from the analysis of the financial statements of the 19 audited entities[4] that 8 entities (UNDP, UNEP, UN-Habitat, UNHCR, UNODC, UNOPS, ICTR and the International Residual Mechanism for Criminal Tribunals) closed the financial year with a surplus, while 11 entities (United Nations (Vol. I), United Nations peacekeeping operations, ITC, United Nations Capital Development Fund, UNFPA, UNICEF, UNITAR, UNRWA, UNU, UN-Women and ICTY) recorded a deficit. Of those 11 entities, 6 entities (United Nations (Vol. I), United Nations peacekeeping operations, UNITAR, UN-Women, UNFPA and ICTY) recorded a deficit in contrast to a surplus recorded in the previous financial year. Some of the main factors contributing to deficits noticed by the Board were an increase in operating expenses, a decrease in voluntary contributions, accounting adjustments to revenues, and mismatch between budget allocation and assessed contribution. Of the eight entities that closed the financial year with a surplus, four entities (UNDP, UN-Habitat, UNODC and the International Residual Mechanism for Criminal Tribunals) recorded a surplus in contrast to a deficit recorded in 2015. The surplus was a result of factors such as increases in pledges, decreases in expenses and increases in revenue. The Board also observed that eight entities (ITC, UNDP, UNEP, UN-Habitat, UNODC, UNOPS, UNRWA and the International Residual Mechanism for Criminal Tribunals) had improved their position of surplus/deficit, whereas the remaining 11 entities had seen a decline in that respect. In that context, it has to be taken into account that United Nations entities are not-for-profit entities and that such improvements or declines are not the sole measure of their overall performance.

Table 1
Comparison of surplus/deficit of different entities
(Thousands of United States dollars)

	Surplus or deficit			
Entity	*2016*	*2015*	*Difference*	*Improvement decline*
United Nations (Vol. I)	(11 487)	12 101	(23 588)	Decline
United Nations peacekeeping operations	(149 820)	11 688	(161 508)	Decline
ITC	(24 406)	(32 027)	7 621	Improvement
United Nations Capital Development Fund	(10 317)	(8 315)	(2 002)	Decline
UNDP	443 047	(237 254)	680 301	Improvement
UNEP	183 434	96 282	87 152	Improvement
UNFPA	(72 065)	15 421	(87 486)	Decline
UN-Habitat	40 170	(102)	40 272	Improvement

[4] The United Nations Joint Staff Pension Fund is not included because it follows International Accounting Standard 26 for the reporting framework and IPSAS for accounting treatments.

Entity	Surplus or deficit		Difference	Improvement decline
	2016	2015		
UNICEF	(507 461)	(75 539)	(431 922)	Decline
UNITAR	(172)	1 948	(2 120)	Decline
UNHCR	126 885	303 469	(176 584)	Decline
UNODC	100 298	(3 763)	104 061	Improvement
UNOPS	31 280	14 335	16 945	Improvement
UNRWA	(42 076)	(121 045)	78 969	Improvement
UNU	(23 806)	(11 429)	(12 377)	Decline
UN-Women	(5 472)	4 014	(9 486)	Decline
ICTR	2 142	28 997	(26 855)	Decline
ICTY	(10 096)	10 928	(21 024)	Decline
International Residual Mechanism for Criminal Tribunals	7 245	(23 578)	30 823	Improvement

Source: Financial statements of the different entities.

10. Table 2 depicts changes in net assets over two years (2015 and 2016). Figure I shows a graphical representation of the comparison of net assets over the two-year period. The Board observed that ITC had negative net assets and that they had increased from 2015 because of continuous deficit and an increase in liabilities. ITC needs to take adequate measures and work to improve the status of its net assets. Otherwise, this may impact the functioning of the entity in the long run.

11. Further, the net assets of 10 entities (United Nations (Vol. I), United Nations peacekeeping operations, ITC, United Nations Capital Development Fund, UNFPA, UNICEF, UNRWA, UNU, UN-Women and ICTY) declined over the previous year. Some of the reasons for the decreases were deficits during 2016 and actuarial losses on employee benefit liabilities. Net assets of the remaining nine entities (UNDP, UNEP, UN-Habitat, UNITAR, UNHCR, UNODC, UNOPS, ICTR and International Residual Mechanism for Criminal Tribunals) had increased compared with the previous year. The increases were attributed to reasons such as a decrease in liabilities, an increase in voluntary contributions, gains from actuarial valuation and the impact of increased surplus.

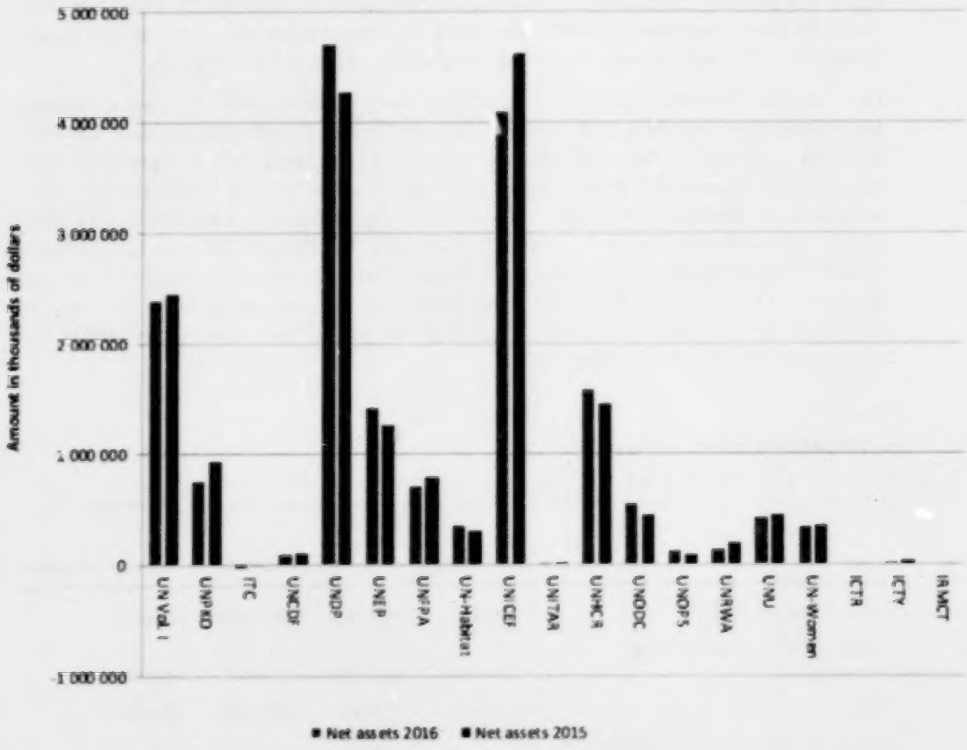
Table 2
Comparison of net assets
(Thousands of United States dollars)

Entity	Net assets		Difference	Improvement decline
	2016	2015		
United Nations (Vol. I)	2 380 432	2 447 580	(67 148)	Decline
United Nations peacekeeping operations	759 039	933 026	(173 987)	Decline
ITC	(33 895)	(414)	(33 481)	Decline
United Nations Capital Development Fund	96 814	107 091	(10 277)	Decline
UNDP	4 705 851	4 270 136	435 715	Improvement
UNEP	1 414 225	1 261 328	152 897	Improvement
UNFPA	711 430	794 372	(82 942)	Decline

Entity	Net assets 2016	Net assets 2015	Difference	Improvement decline
UN-Habitat	349 901	310 359	39 542	Improvement
UNICEF	4 095 984	4 631 026	(535 042)	Decline
UNITAR	21 316	21 097	219	Improvement
UNHCR	1 586 099	1 456 148	129 951	Improvement
UNODC	550 352	453 005	97 347	Improvement
UNOPS	131 586	99 191	32 395	Improvement
UNRWA	142 627	196 103	(53 476)	Decline
UNU	423 391	447 565	(24 174)	Decline
UN-Women	347 671	358 512	(10 841)	Decline
ICTR	8 101	5 955	2 146	Improvement
ICTY	19 749	29 108	(9 359)	Decline
International Residual Mechanism for Criminal Tribunals	14 866	6 840	8 026	Improvement

Source: Financial statements of the different entities.

Figure I
Comparison of net assets of different entities



Source: Financial statements of the different entities.

Ratios

12. Ratio analysis is a quantitative analysis of information provided in the financial statements. The Board's report of various entities discussed mainly four ratios, namely, current ratio (current assets to current liabilities), total assets ratio (total assets to total liabilities), cash ratio (cash + short-term investments to current liabilities) and quick ratio (cash + short-term investments + accounts receivable to current liabilities). A high current ratio indicates an entity's ability to pay off its short-term liabilities. A high ratio of total assets to total liabilities is a good indicator of solvency or financial sustainability. The cash ratio is an indicator of an entity's liquidity, measuring the amount of cash, cash equivalents or invested funds that are in current assets to cover current liabilities. The quick ratio is a more conservative liquidity indicator than the current ratio because it excludes inventory and other current assets, which are more difficult to turn into cash. A higher ratio means a more liquid current position.

13. Ratio analysis provides an assessment of financial sustainability and liquidity across United Nations entities (see table 3). In general, a ratio of 1:1 is considered to be a sound indicator of financial sustainability or liquidity.

14. Except ITC, all other entities[5] demonstrated having more assets than liabilities, thus showing strong solvency. ITC has assets worth $0.76 to pay each $1 of liability. As the major part of its liability is long term (employee benefit liability), there is no immediate threat to its solvency, but ITC needs to strengthen its asset position over the long term. The Board further noticed that United Nations peacekeeping operations, UNOPS and ICTR had liquidity ratios of less than 1:1, which represented pressure in liquidity. The Board notes that the current ratio (0.35), quick ratio (0.35) and cash ratio (0.29) of UNOPS were below 1. Although this would normally indicate concern over liquidity of the entity, the trend reflects a continued policy of longer-term investments that can also be liquidated at any time. These long-term investments are not reflected in the liquidity ratio calculation but can provide sufficient liquidity to meet operational needs if required.

15. In general, the financial position of all entities remained strong. The solvency ratios and liquidity ratios were comfortably high in most of the entities and, in the case of entities in which these ratios were near 1:1 or less, there was no immediate threat to their solvency.

Table 3
Ratio analysis as at 31 December 2016

	Assets to liabilities ratio: total assets/total liabilities		*Current ratio: current assets/current liabilities*		*Quick ratio: (cash + short-term investments + accounts receivables)/current liabilities*		*Cash ratio: (cash + short-term investments)/current liabilities*	
Entity	*2016*	*2015*	*2016*	*2015*	*2016*	*2015*	*2016*	*2015*
United Nations (Vol. I)	1.44	1.46	3.41	2.89	3.11	2.57	2.28	1.77
United Nations peacekeeping operations	1.17	1.21	1.17	1.09	1.04	0.96	0.60	0.56
ITC	0.76	1.00	1.94	2.76	1.86	2.66	1.30	1.29
United Nations Capital Development Fund	9.8	10.3	27	18	26.63	17.67	20.4	15.6
UNDP	3.11	2.99	4.48	3.59	4.28	3.41	4.12	3.18

[5] The United Nations Joint Staff Pension Fund was not included in the analysis owing to its differing nature of operations.

Entity	*Assets to liabilities ratio: total assets/total liabilities*		*Current ratio: current assets/current liabilities*		*Quick ratio: (cash + short-term investments + accounts receivables)/ current liabilities*		*Cash ratio: (cash + short-term investments)/ current liabilities*	
	2016	*2015*	*2016*	*2015*	*2016*	*2015*	*2016*	*2015*
UNEP	5.21	4.80	5.17	4.74	3.69	3.46	2.35	2.13
UNFPA	2.6	2.9	5.7	4.5	5.2	3.8	4	2.6
UN-Habitat	4.71	3.92	6.49	4.76	5.76	4.18	2.76	1.92
UNICEF	1.94	2.11	2.68	2.80	2.05	4	1.50	1.40
UNITAR	2.95	3.02	15.02	12.83	12.40	11.68	8.09	7.56
UNHCR	2.7	2.7	7.9	8.6	6.9	7.5	4.0	4.6
UNODC	3.06	2.46	5.24	3.04	4.99	2.95	3.41	1.72
UNOPS	1.09	1.07	0.35	0.85	0.35	0.84	0.29	0.82
UNRWA	1.17	1.24	2.94	2.63	1.91	1.74	1.76	1.56
UNU	6.05	7.43	3.74	10.35	3.67	10.27	2.31	7.35
UN-Women	4.17	4.95	7.95	8.83	6.78	7.5	6.55	7.1
ICTR	1.14	1.09	0.94	5.13	0.93	5.04	0.72	2.35
ICTY	1.25	1.36	5.25	7.11	5.23	7.06	3.31	4.26
International Residual Mechanism for Criminal Tribunals	1.17	1.11	7.46	0.88	7.38	0.84	1.59	0.79

Source: Audit reports of the Board.

C. Cash and investment management

16. The United Nations and several of its funds and programmes manage significant cash and investments. The administrations have in some cases established specialized treasury functions to support their various needs, and some also provide cash management services to other organizations. With the implementation of the Umoja system, the United Nations has introduced a house bank system in which bank accounts are no longer associated with individual entities. In the house bank system, bank accounts are maintained by currency and country, and all participating entities use them for carrying out transactions. Similarly, the United Nations Treasury maintains an investment pool to invest the pooled amount of participating entities. As at 31 December 2016, a total 11 entities[6] covered in the present report were participating in the investment pool maintained by the United Nations Treasury, which manages total assets of $9.03 billion under its investment pool. Similarly, there are five entities[7] covered in the present report that are pooling investment resources under the leadership of UNDP. UNDP managed a total of $7.28 billion in investments for its own programme and for other United Nations entities under service agreements.

17. As cash balances and the number of accounts, transactions and payment currencies increase, there is a greater need for professional management of the cash and investment so that risks and returns are properly managed. Furthermore, it is vital for the United Nations and its funds and programmes to manage public funds by adopting a strategy to safeguard the funds, maximize return on investment and

[6] UNEP, UN Habitat, ICTR, ICTY, the International Residual Mechanism for Criminal Tribunals, UNJSPF, ITC, United Nations (Vol. I), UNODC, United Nations peacekeeping operations and UNU.

[7] United Nations Capital Development Fund, UNDP, UNFPA, UNITAR and UN-Women.

ensure the continuous availability of cash needed to maintain operations and the optimum level of investments that should be held to underpin the delivery of their activities. Cash and investment pooling is the most desirable model for ensuring effective cash and investment management. This decreases the cost of transactions and provides expert investment management services to the participating entities. The status of cash and cash equivalents, and investments, as at 31 December 2016 for 19 entities[a] is shown in table 4.

Table 4
Cash and cash equivalents and investments as at 31 December 2016
(Thousands of United States dollars)

Entity	*Cash and cash equivalents*	*Investment*		*Has the entity pooled resources with other entities?*	*With whom the resources have been pooled*
		Short-term	*Long-term*		
United Nations (Vol. I)	820 343	1 428 837	741 169	Yes	UNHQ
United Nations peacekeeping operations	184 536	1 546 697	433 275	Yes	UNHQ
ITC	12 991	22 991	11 071	Yes	UNHQ
United Nations Capital Development Fund	12 753	48 019	26 951	Yes	UNDP
UNDP	917 451	3 464 166	2 002 210	Yes	UNDP
UNEP	169 714	300 456	144 677	Yes	UNHQ
UNFPA	213 582	324 880	218 047	Yes	UNDP
UN-Habitat	55 540	98 158	47 265	Yes	UNHQ
UNICEF	1 133 528	2 681 362	776 248	No	–
UNITAR	5 121	10 651	0	Yes	UNDP
UNHCR	972 350	150 000	0	No	–
UNODC	143 896	246 445	118 669	Yes	UNHQ
UNOPS	399 373	12 764	1 122 613	No	–
UNRWA	267 225	25 073	3 988	No	–
UNU	46 900	13 388	315 460	Yes	UNJSPF/UNHQ
UN-Women	100 979	171 792	114 414	Yes	UNDP
ICTR	14 579	25 812	12 429	Yes	UNHQ
ICTY	18 527	32 741	15 765	Yes	UNHQ
International Residual Mechanism for Criminal Tribunals	6 560	11 605	5 588	Yes	UNHQ

Source: Financial statements of the different entities.

D. Budget management

Results-based budgeting

18. In any organization, the budget is a key tool for deciding how resources will be allocated to deliver strategic objectives. Budgets should represent an articulation of an organization's priorities and aspirations and communicate management's view on the resources required to achieve them.

19. The Secretary-General, in his report on renewing the United Nations: a programme for action (A/51/950/Add.6), proposed that he and Member States should enter into a dialogue with the aim of shifting the United Nations programme

[a] Except UNJSPF.

budget from a system of input accounting to results-based accountability. The Secretary-General has defined results-based budgeting as "methodology and format for developing budgets that focus on outputs and outcomes, using predetermined criteria set by Member States".

20. The goals of results-based budgeting within the United Nations are:

- To measure performance in order to show whether the activities of the Organization actually make a difference
- To establish a top-down, logical framework, using a number of strictly defined concepts, such as objectives for the biennium, expected results, performance indicators and outputs
- To use the biennial programme budget as a direct link between expected accomplishments and resource requirements
- To become a management and planning tool, rather than another budgeting methodology, by mapping the expected results for a biennium in advance and continuously tracking them
- To focus on the question of "why performance was below expectations" and enable managers to detect deficiencies (rather than be a simple cost-cutting tool).

21. Thus, the results-based budget is an important tool to ensure that the United Nations and its funds and programmes are working towards achieving their outcomes and outputs. The Board noted that, except UNU, all other entities[9] have adopted results-based budgeting (see table 5). UNU applies the UNU project management guidelines, which use concepts similar to results-based budgeting; detailed quality and performance indicators are defined and results monitored throughout the project implementation cycle.

Table 5
Status of the budget in different entities

Entity	*Number of budgets the entity has*	*Does the entity have a results-based budgeting framework?*
United Nations (Vol. I)	1	Yes
United Nations peacekeeping operations	17	Yes
ITC	1	Yes
United Nations Capital Development Fund	1	Yes
UNDP	1	Yes
UNEP	4	Yes
UNFPA	2	Yes
UN-Habitat	2	Yes
UNICEF	6	Yes
UNITAR	1	Yes

[9] ICTR has not been considered for the present analysis.

Entity	*Number of budgets the entity has*	*Does the entity have a results-based budgeting framework?*
UNHCR	1	Yes
UNJSPF	1	Yes
UNODC	2	Yes
UNOPS	1	Yes
UNRWA	4	Yes
UNU	1	No
UN-Women	2	Yes
ICTY	3	Yes
International Residual Mechanism for Criminal Tribunals	4	Yes

Source: Information provided by the different entities.

22. The Board noted that 10 entities had multiple budgets for different purposes. All entities had a budget that was directly linked to statements of comparison of budget and actual amounts in the financial statements.

23. The issues noticed by the Board in budget management are discussed below.

24. Core management functions are typically required to be funded from the institutional budget. Nevertheless, the Board observed that UNICEF continued funding a part of core management functions from programme funds. The Board further noted that on 3 July 2017 UNICEF had come up with a guideline to identify the operational costs that should be met from the programme budget and the institutional budget.

25. For the United Nations (Vol. I), the Board is of the view that the actual consumption figures for the first 10 months of the first year of the biennium should be considered for framing revised estimates and for adjusting budgetary allocation for the first and the subsequent year at the time of the preparation of the first performance report. This would add value to the budget preparation and monitoring exercise and help in ensuring that a more dynamic watch is kept on expenditure trends.

26. In the six visited country offices of UN-Habitat, the Board noted that five projects (two in the Sudan, three in Somalia) had budget overspends of $1.02 million without a written authority, contrary to the provision of the project manual. UN-Habitat attributed the overspending to factors such as Umoja shortcomings, which have already been communicated to the Headquarters via UNON in order to enhance or correct the system. The Board is of the view that overspending of the budget lines constitutes non-compliance with the budget controls instituted by UN-Habitat and weakens the purpose of the budget as a financial management tool.

27. The approved budget for ICTR liquidation activities from 1 January 2016 to 31 May 2016 was $2.09 million from the regular budget. The liquidation process was not completed as planned, however, and an extension of two months was allowed to complete the remaining activities. The Board noted that the liquidation

budget did not include education grant benefits for ICTR staff who had separated in 2015 and 2016 and that a provision for separation established in 2015 was insufficient. The payments for those unbudgeted education grant claims and separation entitlements resulted in an overexpenditure of $3.73 million in 2015, which had to be settled against the 2016 appropriation.

28. The Board noted in UNOPS that explanations of item-wise material differences between the original management budget and the final budget, and between the final budget and the actual amounts, were not presented in either the financial statements or the Executive Director's statement. Such an explanation of material differences is required to be presented as per the provisions of paragraph 14 of IPSAS 24.

E. Employee benefit liabilities

29. Post-employment benefits are those payable after completion of employment, but exclude termination payments. Post-employment benefits include pension plans, post-employment medical care (after-service health insurance), repatriation grants and other lump sums payable after the completion of employment. The pensionary benefits are paid through the United Nations Joint Staff Pension Fund. The status of employee benefit liabilities (excluding pensionary benefits) in different entities[10] is presented in table 6.

Table 6
Status of employee benefit liabilities in different entities
(Thousands of United States dollars)

	Total employee benefit liability[a]					
Entity	*2016*	*2015*	*Increase or decrease*	*Total liabilities (2016)*	*Employee benefit liabilities as a percentage of total liabilities (2016)*	*Does the entity have funding arrangements for employee benefit liabilities?*
United Nations (Vol. I)	4 450 164	4 270 117	Increase	5 397 462	82.45	No
United Nations peacekeeping operations	1 744 456	1 606 438	Increase	4 548 585	38.35	No
ITC	90 316	79 434	Increase	138 923	65.01	No
United Nations Capital Development Fund	10 304	9 749	Increase	10 986	93.79	Yes
UNDP	1 319 995	1 254 611	Increase	2 229 431	59.21	Yes
UNEP	146 077	137 715	Increase	336 294	43.44	No
UNFPA	329 240	302 663	Increase	434 917	75.70	Yes
UN-Habitat	41 551	38 469	Increase	94 412	44.01	No
UNICEF	1 236 273	1 136 241	Increase	4 351 505	28.4	Partial
UNITAR	9 004	8 574	Increase	10 931	82.37	Partial
UNHCR	746 195	701 905	Increase	939 706	79.41	Yes
UNJSPF	76 736	70 358	Increase	227 072	33.79	Yes
UNODC	110 523	101 904	Increase	267 691	41.29	Yes
UNOPS	97 720	89 068	Increase	1 505 185	6.49	Yes
UNRWA	745 860	697 436	Decrease	830 262	89.83	No
UNU	14 317	13 312	Increase	83 869	17.07	Yes

[10] Except ICTR.

UN-Women	78 751	74 461	Increase	109 818	71.71	Yes
ICTY[b]	41 116	45 539	Decrease	79 053	52.01	Yes
International Residual Mechanism for Criminal Tribunals	61 803	14 692	Increase	89 547	69.02	Yes

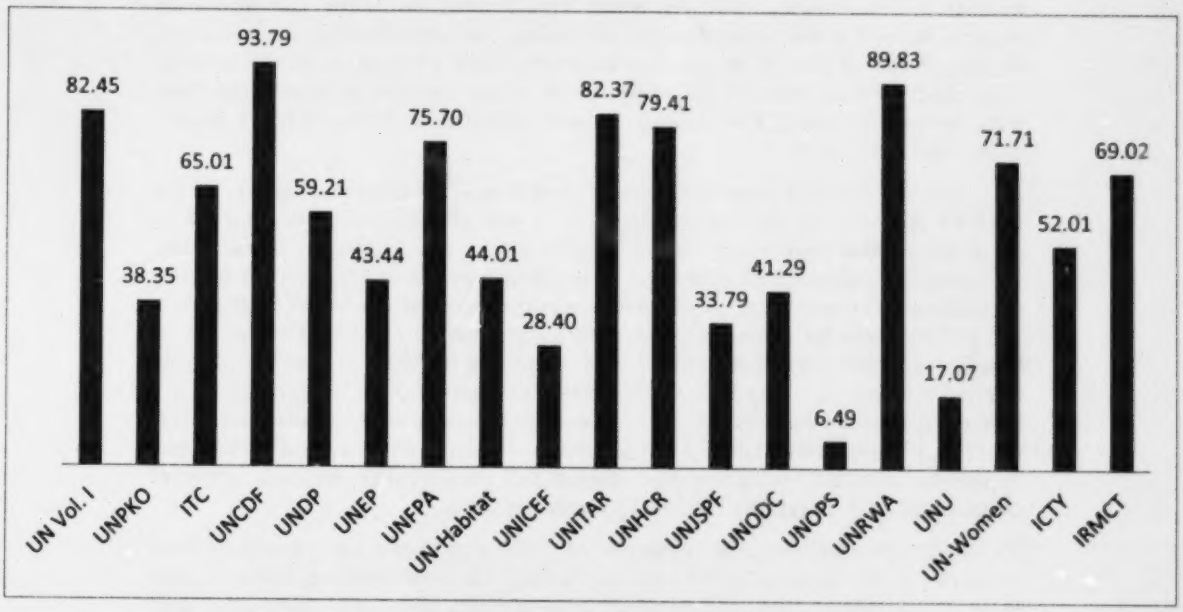
Source: Financial statements and information provided by the different entities.

[a] Excluding pension liabilities.

[b] Excluding judges' benefits liabilities.

Figure II

Employee benefit liabilities as a percentage of total liabilities



Source: Financial statements of the different entities.

30. The Board noted that employee benefit liabilities were among the major liabilities for most of the entities. Figure II shows employee benefit liabilities as a percentage of total liabilities. For 17 entities, such liabilities were more than one fourth (25 per cent) of total liabilities; for 11 entities, they were more than half of total liabilities. They were as high as 93.79 per cent of total liabilities for the United Nations Capital Development Fund and more than 75 per cent of total liabilities for the United Nations (Vol. I), UNFPA, UNITAR, UNRWA and UNHCR.

31. It is important for entities to have a funding plan for these liabilities. Absence of such a funding arrangement would make it very difficult for an entity to make payment of employee benefit liabilities in the long run. The Board noted that six entities[11] had no funding arrangements for employee benefit liabilities and that UNICEF and UNITAR had only a partial funding arrangement. There was an immediate need for the entities of United Nations system to consider appropriate funding arrangements for long-term employment benefit liabilities similar to the joint arrangements worked out for pensionary liabilities, or any other suitable arrangement.

[11] United Nations (Vol. I), United Nations peacekeeping operations, ITC, UNEP, UN-Habitat and UNRWA.

32. The issues noticed by the Board in managing employee benefit liabilities are discussed below.

33. The Board finds that there is inadequate control over the whole exercise of collecting and collating the details of staff (active staff and retirees) for onward transmission to the actuary in the United Nations (Vol. I). The Administration is dependent upon various Missions sending their respective details to Headquarters. The omissions in the data sent for actuarial valuation indicate that sufficient checks are not carried out at Headquarters to ensure their completeness. Although it was mentioned that the data pertaining to some entities had to be extracted from a number of systems other than Umoja, the Board found that details of a substantial number of international staff for whom data resided in Umoja had also been omitted. After that was pointed out by the Board, the Administration identified and forwarded the details of 932 active employees and 19 retirees to the actuary. Accordingly, on the basis of the advice of the actuary, employee benefit liabilities were restated by adding $56.3 million to such liabilities in 2016 and $51.2 million to such liabilities in 2015.

34. Article 12 of the Regulations, Rules and Pension Adjustment System of the UNJSPF provides that the Pension Board shall have an actuarial valuation made of the Fund at least once every three years. Based on examination of the actuarial valuation, the Board found anomalies in the data supplied to actuaries for making calculations. The number of participants as per the financial statements of 2015 was 126,892, whereas the actuarial report cited the number as 114,375. The number of benefits of retired participants was 71,474 as per the financial statements of 2015, whereas the corresponding figure in the actuarial report was 75,299. Therefore, the actuarial valuation done by the actuary was inconsistent with the data published with the 2015 financial statements. When that was pointed out, the Fund decided not to use the actuarial valuation and instead roll forward the previous actuarial valuation as at 31 December 2013 to 31 December 2016.

35. In UNDP, the actuarial valuation of 2016 was based on participant data forwarded to the actuaries in 2015 as per practice. The Board noticed, however, that as at 31 December 2016, the number of participants was 3,494, while the data forwarded to the actuary had the details of only 3,327 participants, indicating a change of 167. The Board considers that the decision to roll forward prior-year data should have been based on a clearly pre-defined threshold for a significant change in the staffing profile which determines the need for a full formal valuation using current data or a rolling forward prior-year data.

36. Since 2012, UNHCR has funded after-service health insurance liabilities by charging 3 per cent of the net base salary of all professional and relevant general service staff. The accumulated funding balance as at 31 December 2016 was $59.9 million. With regard to these funding reserves, UNHCR currently applies an investment strategy with a maximum term of investment of up to one year. Nevertheless, the Board pointed out that the after-service health insurance liabilities had a long-term maturity. The Board holds that an analysis of risks and rewards from a strategy that matches long-term after-service health insurance assets with corresponding liabilities is required. This analysis could be done with reference to the time horizon of the after-service health insurance liability, liquidity requirements, associated currency requirements and other appropriate factors.

F. Fraud awareness and prevention

37. The Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service

shall be the necessity of securing the highest standards of efficiency, competence, and integrity" (art. 101). The promotion and maintenance of a culture of integrity and honesty need to be a pillar of utmost importance in the work culture of the United Nations, its funds and programmes.

38. The United Nations and its funds and programmes deal with contributions raised from the member countries and donations from governmental and non-governmental entities. Dealing with money received in good faith makes the United Nations and its funds and programmes more responsible and accountable for demonstrating a culture of good and transparent governance and zero tolerance of fraud and corruption.

39. The Board collected information from 18 entities[12] and analysed how those entities were equipping themselves to deal with fraud. The Board noted that all entities had confirmed that they had in place:

- A documented anti-fraud and anti-corruption framework
- Adequate strategies to prevent fraud
- A mechanism to report and monitor fraud cases
- A mechanism to protect whistle-blowers.

Nevertheless, only 11 out of 18 entities had conducted fraud risk assessments, and six entities had no earmarked funds, as indicated in table 7 below:

Table 7
Mechanism to monitor and prevent fraud

Entity	*Has the entity conducted a fraud risk assessment?*	*Has the entity allocated dedicated resources for anti-fraud measures and activities*
United Nations (Vol. I)	No	Yes
ITC	No	Yes
United Nations Capital Development Fund	Yes	Yes
UNDP	Yes	Yes
UNEP	No	Yes
UNFPA	Yes	Yes
UN-Habitat	Yes	No
UNICEF	Yes	Yes
UNITAR	No	No
UNHCR	Yes	Yes
UNJSPF	Yes	Yes
UNODC	No	No
UNOPS	Yes	Yes
UNRWA	Yes	Yes

[12] Except United Nations peacekeeping operations and ICTR.

Entity	*Has the entity conducted a fraud risk assessment?*[a]	*Has the entity allocated dedicated resources for anti-fraud measures and activities*
UNU	Yes	No
UN-Women	Yes	Yes
ICTY	No	No
International Residual Mechanism for Criminal Tribunals	No	No

Source: Information provided by the different entities.

[a] Fraud risk assessment is done to identify and address the vulnerability of an entity to internal fraud. Fraud examiners can use that resource to assist organizations in obtaining a better understanding of the overall fraud threat they face, identifying fraud risks and developing a fraud risk response. The assessment may be integrated with an overall organizational risk assessment or performed as a stand-alone exercise, but should, at a minimum, include risk identification, risk likelihood and significance assessment, and risk response.

40. To prevent or detect fraud, an entity needs to build capacity in the organization. For capacity-building, training is the foremost tool available. The Board reviewed the status of training related to awareness of fraud in 18 entities.[13] The Board noted that all the entities had fraud awareness programmes and, except for ICTY and the International Residual Mechanism for Criminal Tribunals, all entities had imparted training on fraud awareness to their staff. When asked about the percentage of staff trained, nine entities, namely, the United Nations (Vol. I), ITC, UNEP, UN-Habitat, UNHCR, UNJSPF, UNODC, UNOPS and UN-Women, could provide data. The status of training on fraud awareness is shown in table 8 below.

Table 8
Fraud awareness training

Entity	*Percentage of staff that has received such training*	*Has such training been imparted to the staff working in the most vulnerable areas, e.g., procurement, fund management and staff claims?*
United Nations (Vol. I)	67	Yes
ITC	80	Yes
United Nations Capital Development Fund	Not available	Yes
UNDP	Not available	Yes
UNEP	99	Yes
UNFPA	Not available	Yes
UN-Habitat	89	Yes
UNICEF	Not available	Yes
UNITAR	Not available	Yes
UNHCR	8[a]	Yes
UNJSPF	100	Yes
UNODC	67	Yes
UNOPS	7	Yes
UNRWA	Not available	Yes

[13] Except ICTR and United Nations peacekeeping operations.

Entity	*Percentage of staff that has received such training*	*Has such training been imparted to the staff working in the most vulnerable areas, e.g., procurement, fund management and staff claims?*
UNU	Not available	Yes
UN-Women	100	Yes
ICTY	Not available	No
International Residual Mechanism for Criminal Tribunals	Not available	No

Source: Information provided by the different entities.

[a] The training was launched only on 9 December 2016 and is ongoing.

41. The Board noted that, for the United Nations (Vol. I) and other Secretariat entities, the Under-Secretary-General for Management had issued the Anti-Fraud and Anti-Corruption Framework of the United Nations Secretariat (ST/IC/2016/25), dated 9 September 2016. The objective was to assist the Secretariat in promoting a culture of integrity and honesty within the United Nations by providing information and guidance on how the Secretariat acts to prevent, detect, deter, respond to and report on fraud and corruption. The Board noted that, while the kinds of cases that would be considered high risk or low risk were illustrated, the criteria were general and there was no specific guidance to determine which investigations would be considered high risk and complex. The lack of specific guidance exposed the process to the risk of arbitrariness and precluded the Administration from realizing the benefits of having put a comprehensive anti-fraud and anti-corruption framework into place.

G. Implementing partners

42. The United Nations and its funds and programmes have a vast mandate to fulfil. They need to work in different areas of the world and continuously provide services and assistance. It is neither economical nor efficient for the United Nations and its funds and programmes to deploy their staff for all of the work they execute. Thus, they accept help from implementing partners in delivering their mandate. An implementing partner is an entity that is responsible and accountable for ensuring the proper use of agency-provided resources and the implementation and management of the intended programme as defined in the work plan. An implementing partner can be a governmental or non-governmental agency, or even a United Nations agency which is executing the work.

43. The harmonized approach to cash transfer framework was first adopted in 2005 by UNDP, UNICEF, UNFPA and the World Food Programme, pursuant to General Assembly resolution 56/201 on the triennial policy review of operational activities for development of the United Nations system. The framework represents a common operational (harmonized) framework for transferring cash to government and non-governmental implementing partners, irrespective of whether these partners work with one or multiple United Nation agencies. The objective of the framework is to support a closer alignment of development aid with national priorities and to strengthen national capacities for management and accountability, with the ultimate objective of gradually shifting to national systems. At present, the framework applies to UNDP, UNFPA and UNICEF in all situations, including in emergency and crisis situations, and in post-conflict countries. Other United Nations agencies and inter-agency programmes may adopt the revised framework based on its applicability to their rules, policies and business models.

44. Based on their business models, other United Nations entities, such as United Nations (Vol. I) and UNHCR, have developed their own frameworks. For instance, the framework of UNHCR for implementing partnerships includes comprehensive governance and management instruments for protecting persons of concern to UNHCR. This framework was designed to support accountability with respect to resources entrusted to UNHCR. It outlines the policies, guidelines and practices of UNHCR when working with partners to implement projects. The main elements of the UNHCR framework are: (a) selection and retention of partners for undertaking project partnership agreements; (b) design of project partnership agreements; (c) implementation and monitoring; and (d) accountability and closure of project partnership agreements.

45. The assurance mechanisms that are used to manage grants in respect of the country-based pooled funds of the Office for the Coordination of Humanitarian Affairs of the Secretariat, reported under the United Nations (Vol. I), are prescribed in the country-based pooled fund operational handbook. The assurance mechanism varies from project to project depending on four factors, namely, the type of implementing partner, the partner risk level, the value of the project and the duration of the project. The assurance is exercised by fixing the percentage of project funds that are disbursed in each tranche. Further, the requirement of financial reporting and narrative reports is prescribed both during and upon the completion of the project. Monitoring is prescribed through field visits and financial spot checks. In addition, there is a requirement that projects be audited.

46. The Board has reviewed the relationship of implementing partners with the United Nations, its funds and agencies (see table 9). United Nations entities need to ensure the effective selection, monitoring and assessment of implementing partners for effective delivery of their mandate through such partners.

Table 9
Implementing partners

Entity	*Amount transferred to implementing partners as a percentage of total programme budget*	*Does the entity have a risk-based assurance framework for monitoring the work of implementing partners?*	*Does the entity have documented fraud-detection tools for detecting fraud by implementing partners?*
United Nations (Vol. I)	23	Yes	Yes
UNDP	52	Yes	Yes
UNEP	29	Yes	No
UNFPA	32	Yes	Yes
UN-Habitat	19	Yes	No
UNICEF	39	Yes	Yes
UNITAR	10	No	Yes
UNHCR	36	Yes	Yes
UNODC	5	Yes	No
UN-Women	17	Yes	No

Source: Information provided by the different entities.

47. The Board noted that 10 entities (United Nations (Vol. I), UNDP, UNEP, UNFPA, UN-Habitat, UNICEF, UNITAR, UNHCR, UNODC and UN-Women) use implementing partners to execute their mandate. They transfer substantial amounts to implementing partners to carry out the activities. The amounts transferred ranged

between 5 per cent (UNODC) and 52 per cent (UNDP) of their respective programme budgets.

48. The Board further noted that all the reviewed entities had a documented procedure for the selection of implementing partners, a policy for transferring funds to implementing partners and assessment policies to monitor them. Except for UNITAR, all other reviewed entities had a risk-based assurance framework for monitoring the work of implementing partners.

49. For preventing the occurrence of fraud by implementing partners, entities need to have documented fraud detection tools. The Board noted that the United Nations (Vol. I), UNDP, UNFPA, UNICEF, UNITAR and UNHCR had documented tools for detecting fraud by implementing partners.

50. The issues noticed by the Board in the managing of implementing partners are discussed below.

51. For UNHCR, the Board continues to take a positive view of UNHCR processes at the headquarters level which support the implementing partnership expenses. On its visits to country operations, however, the Board identified room for improvement, for instance, in identifying project risks and using a risk-based monitoring approach. The quality of the risk descriptions and the underlying risk assessments varied significantly among country operations and sometimes even among offices within the same operation. In some operations, key project risks were described in different documents, but not in a coherent way.

52. The Board observed that, in the United Nations (Vol. I), the revenues received from contributions made by the European Union/European Commission under the financial and administrative framework agreements were treated as conditional. Hence, it was expected that the United Nations would retain control over the transfers made out of those revenues to implementing partners for specific implementation goals. Even in such cases, however, the transfers to implementing partners had been expensed in the financial statements, indicating a loss of control over those transfers. The Board finds this to be a dichotomous situation, as the United Nations bears the risk of conditional contributions but does not pass the associated risk downstream to the implementing partners. The Board therefore emphasizes that agreements with implementing partners should have adequate provisions establishing the control of the United Nations over such transfers to implementing partners to match with the conditions in their respective agreements.

53. In the course of the audit of the country offices of the Office for the Coordination of Humanitarian Affairs, the Board observed that the procedure whereby country offices maintain the validity of the long-term agreement for audit service[14] until a new agreement has been obtained was not followed in Afghanistan and Myanmar. The long-term agreement for audit service had expired before a new one was obtained.

54. From an analysis of the data relating to the final financial statement and final narrative report related to the implementing partners for the years 2015 and 2016, the Board noted that, out of 489 projects that were due for submission of a final narrative report, 59 projects (12 per cent) had been delayed beyond two months from the due date, which was indicative of risk and affected the quality of evaluation of projects of country-based pool funds in Office for the Coordination of Humanitarian Affairs in the United Nations (Vol. I).

[14] Long-term agreements are entered into by the country offices with auditing firms to audit implementing partners.

55. While the framework of UNHCR for working with implementing partners encourages country operations to adopt a risk-based monitoring approach to the verification and oversight of implemented projects, the Board identified cases in which a risk-based monitoring approach had not been adequately used in practice. The findings also highlighted the need to take a more risk-focused monitoring approach and to ensure that monitoring visits to implementing partners were planned in a systematic manner. In times of increased financial restrictions and underfunding of operations, a risk-based monitoring approach was reasonable, as it could reduce the cost and burden of verification, while providing stronger and more focused monitoring.

56. As per the harmonized approach to cash transfers policy, paragraph 21 (a) targets for assurance activities implemented stood at 90 per cent by the end of 2016. In UNICEF, the Board observed shortcomings in meeting the targets in the following areas:

- Spot checks in the East Asia and Pacific region (84 per cent), East and Southern Africa region (87 per cent), Latin America and Caribbean region (84 per cent) and Middle East and North Africa region (70 per cent)
- Nine country offices conducted less than 80 per cent of spot checks: Democratic Republic of Congo (79 per cent), Central African Republic (71 per cent), Iraq (70 per cent), Mozambique (61 per cent) Somalia (56 per cent), Turkey (41 per cent), Sierra Leone (38 per cent), Yemen (35 per cent) and Syrian Arab Republic (33 per cent)
- Five country offices conducted less than 80 per cent of programmatic visits: Pakistan (77 per cent), Iraq (76 per cent), Mozambique (61 per cent), Central African Republic (69 per cent) and Ghana (56 per cent).

57. In UN-Habitat, 12 implementing partners at the Nepal and Philippines country offices had delayed the submission of their final financial reports and audited financial statements for periods ranging from two to nine months from the agreed submission date, contrary to the cooperation agreements between UN-Habitat and the implementing partners. At the Philippines country office, management attributed the delay to the staff's limited knowledge of Umoja during the migration process. At the Nepal country office, management explained that the delays were mainly the result of the 25 April 2015 earthquake and the national festivals of Dashain and Tihar in September and October 2015). The Board noted that the earthquake in Nepal that occurred in 2015 could not be the main cause of delays that had been occurring since 2014. The other reasons cited were known in advance and were controllable.

58. Paragraph 4 (f) of the harmonized approach to cash transfers programme and operations policies and procedures requires that, where agencies share an implementing partner, they should work together to ensure an appropriate balance between the agency's assurance requirements and the burden of oversight and assurance on the implementing partner. In UNDP, the Bangladesh, Honduras and Uruguay country offices did not have joint the harmonized approach to cash transfer assurance plans, even though they shared implementing partners with other United Nations agencies. Management attributed non-preparation of a joint harmonized approach to cash transfer assurance plan to factors such as differences among agencies in the definition of implementing partners, the threshold for implementing partners and timelines for audits of national implementation modalities and non-governmental organizations. The Board takes note of management explanations but still underscores the benefits of having a joint assurance plan that includes balancing the oversight burden and increased assurance levels.

59. According to its cost recovery policy and procedures, UN-Women reimburses expenses and fees incurred by implementing partners in the implementation of the programme activities that it funds from project resources. The applicable rates are negotiated between the parties and specified in the project workplan or project budget. The current policy does not, however, provide guidance on the basis or criteria to be used by UN-Women and its implementing partners in determining the rates for support costs. The Board reviewed records for 57 non-government partners with an annual budget of $8 million at six UN-Women field offices and noted that the support cost rates allocated to implementing partners ranged from 1.4 to 26.4 per cent of the annual budget, without indicating the basis used to determine those rates.

60. The Board noted deficiencies in the microassessment of implementing partners at five UNFPA field offices (the Burkina Faso, Egypt, Madagascar, Papua New Guinea and Uganda country offices). UNFPA informed the Board that it would be reviewing the reasons for the deficiencies and explained that it would develop more specific and actionable guidance for the follow-up on microassessment findings, in close collaboration with other United Nations agencies and development partners.

H. Preparedness for implementation of the Sustainable Development Goals

61. The Sustainable Development Goals, which Member States jointly committed to achieving in September 2015, provide an ambitious and long-term agenda on a broad range of vital issues. In "Transforming our world: the 2030 Agenda for Sustainable Development", the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, Member States noted that: "Our Governments have the primary responsibility for follow-up and review, at the national, regional and global levels, in relation to the progress made in implementing the Goals and targets over the coming 15 years".

62. The Sustainable Development Goal framework contains 17 goals and 169 targets to be achieved by 2030. The Goals are a major improvement over the Millennium Development Goals. The Sustainable Development Goal framework addresses key systematic barriers to sustainable development, such as inequality, unsustainable consumption patterns, weak institutional capacity and environmental degradation, that the Millennial Development Goals ignored.

63. While the onus is on national Governments to strive to achieve the Sustainable Development Goals, the various United Nations agencies could play a key supportive role in supporting, facilitating, building capacity and offering other forms of assistance to national Governments in achieving specific goals. For instance, among United Nations agencies, UN-Women could play a lead role relating to Goal 5, on achieving gender equality. Similarly, UN-Habitat could play a lead role with regard to Goal 11, on sustainable cities and communities. These agencies could also support other agencies on various other targets. For example, UNICEF could support Sustainable Development Goal 5, since it aims, through its country programmes, to promote the equal rights of women and girls and to support their full participation in the political, social and economic development of their communities. It is clear from the brief description above that several goals would require close coordination and cooperation among United Nations agencies to avoid duplication of effort and ensure synergy. UNICEF informed the Board that the new strategic plans of a group of United Nations agencies shared a common chapter and annex that described the aforementioned coordination and cooperation in detail.

64. While several agencies would have an important role to play in relation to the Sustainable Development Goals, the Department of Economic and Social Affairs plays the coordinating role.

65. The Board reviewed the roles of different United Nations entities[15] in the implementation of the Goals (see annex III). Table 10 shows the Goals and the list of entities addressing them.

Table 10
Sustainable Development Goals and the entities addressing them

Sustainable Development Goals		*Entity*
Goal 1	End poverty in all its forms everywhere	ITC, United Nations Capital Development Fund, UNDP, UNEP, UNICEF, UNOPS and UN-Women
Goal 2	End hunger, achieve food security and improved nutrition and promote sustainable agriculture	ITC, UNICEF and UNOPS
Goal 3	Ensure healthy lives and promote well-being for all at all ages	UNEP, UNFPA, UNICEF, UNITAR, UNODC and UNOPS
Goal 4	Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all	ITC, UNICEF, UNITAR and UNOPS
Goal 5	Achieve gender equality and empower all women and girls	ITC, United Nations Capital Development Fund, UNFPA, UN-Habitat, UNICEF, UNITAR, UNODC, UNOPS and UN-Women
Goal 6	Ensure availability and sustainable management of water and sanitation for all	UNEP, UNICEF, UNODC and UNOPS
Goal 7	Ensure access to affordable, reliable, sustainable and modern energy for all	United Nations Capital Development Fund, UNEP and UNOPS
Goal 8	Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all	ITC, United Nations Capital Development Fund, UNDP, UNEP, UNITAR, UNODC, UNOPS and UN-Women
Goal 9	Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation	ITC, United Nations Capital Development Fund, UNEP, UNICEF, UNITAR and UNOPS
Goal 10	Reduce inequality within and among countries	ITC, United Nations Capital Development Fund, UNDP, UNEP, UNFPA, UNICEF, UNITAR, UNODC and UN-Women

[15] Except ICTR and United Nations peacekeeping operations.

Sustainable Development Goals		*Entity*
Goal 11	Make cities and human settlements inclusive, safe, resilient and sustainable	United Nations Capital Development Fund, UN-Habitat, UNITAR, UNODC, UNOPS and UN-Women
Goal 12	Ensure sustainable consumption and production patterns	ITC, UNEP, UNITAR and UNOPS
Goal 13	Take urgent action to combat climate change and its impacts	UNDP, UNEP, UNICEF, UNITAR, UNOPS and UN-Women
Goal 14	Conserve and sustainably use the oceans, seas and marine resources for sustainable development	UNDP, UNEP and UNODC
Goal 15	Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss	UNDP, UNEP, UNITAR and UNODC
Goal 16	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels	ITC, UNDP, UNEP, UNICEF, UNITAR, UNODC, UNOPS and UN-Women
Goal 17	Strengthen the means of implementation and revitalize the global partnership for sustainable development	ITC, United Nations Capital Development Fund, UNEP, UNICEF, UNITAR, UNODC and UNOPS

Source: Information provided by the different entities.

66. The Board noted that not all entities under review had formulated a long-term strategy on their role in the implementation of the Sustainable Development Goals. The General Assembly, in its resolution 71/243, on the quadrennial comprehensive policy review of operational activities for development of the United Nations system, called upon United Nations funds, programmes and specialized agencies to reflect their contribution to the implementation of the 2030 Agenda for Sustainable Development in their strategic plans and similar planning documents and to elaborate on how they planned to engage in coherent and integrated support, as called for in the 2030 Agenda. Thus the entities are required to formulate long-term strategies for implementing the Goals.

67. The issues noticed by the Board in the preparedness for implementation of the Goals are discussed below.

68. For United Nations (Vol. I) entities, the Board noted that the overall strategy of the offices, departments and divisions is outlined in the biennial programme plans; the programme budget for the biennium is the operational plan. Further, the Board is of the view that there is a need to further align the strategy with the requirements to systematically address work related to the Goals in order to achieve

the coherence desired by the General Assembly. The Board further observed that methodologies and standards for the collection of data for indicators are still to be finalized. This could delay the measurement of progress of up to one third of the targets, i.e., 56 of the 169 targets.

69. The Board noted that UNODC had not officially introduced focal points for the Goals that were of importance to the field offices. The Board holds that a clear structure would accelerate the exchange of information between UNODC headquarters and field offices. Also, there was no comprehensive and integrated approach to implementation support regarding the Goals. The Board considers it necessary to develop a complete draft and long-term strategy for implementing the 2030 Agenda.

70. ITC has developed a new project portal, in which development markers are used to link each project with three Sustainable Development Goals (Goals 5, 8 and 12) only. ITC is committed to 10 out of the 17 Sustainable Development Goals. In view of the utility of the development marker, the Board is of the view that ITC needs to explore the possibility of linking all projects to the respective Goals through development markers or similar mechanisms. This would facilitate the assessment and monitoring of the impact of ITC on the achievement of the Goals.

71. UNOPS had not formulated a long-term strategy on its role in the implementation of the Goals. During its midterm assessment of the strategic plan for the period 2014-2017, UNOPS laid down a framework on how it would support the 2030 Agenda. The assessment of its contribution to different Goals suggested that four Goals (3, 9, 11 and 16) accounted for approximately three quarters of UNOPS total delivery. UNOPS saw itself as playing a supporting role towards implementation of the Goals by Member States, as it was responsive to the needs of clients and was demand-driven. UNOPS stated that it would, through its consultative process and the supporting analysis for the development of its strategic plan for the period 2018-2021, consider appropriate measures to further focus its contributions with regard to the achieving the Goals and the 2030 Agenda.

I. Human resources management

Accessible and inclusive United Nations

72. The General Assembly passed resolutions 61/106 of 13 December 2006, 64/154 of 18 December 2009, 65/186 of 21 December 2010 and 66/229 of 24 December 2011 towards the creation of a non-discriminatory and inclusive working environment for staff members with disabilities at the United Nations Secretariat. The United Nations established a formal policy on access to facilities, employment opportunities and the availability of reasonable accommodation for staff members with disabilities through the Secretary General's bulletin ST/SGB/2014/3, dated 19 June 2014.

73. The Board of Auditors, in its report A/70/5 (Vol I) and Corr.1, observed that the United Nations had no mechanisms or assurance frameworks in place to monitor progress in implementing the policy. While considering the above report of the Board of Auditors in October 2015, the Advisory Committee on Administrative and Budgetary Questions was informed by the Administration that a forthcoming administrative instruction would provide further details on the procedures for the implementation of the United Nations policy on reasonable accommodation and the responsibilities and roles of the different offices.

74. Subsequently, in December 2015, the General Assembly in its resolution 70/170, requested the Secretary General to submit to it a comprehensive

report on, inter alia, the status and application of existing regulations relating to reasonable accommodation and the status of facilities and services relating thereto and areas that needed improvement to ensure full accessibility, following universal design, and reasonable accommodation within the United Nations system, including its agencies, funds and programmes, and regional offices.

75. Accordingly, the Secretary-General submitted the report entitled "Towards the full realization of an inclusive and accessible United Nations for persons with disabilities" in August 2016 (A/71/344 and Corr.1). He indicated that action on preparing the administrative instructions would commence once the Third Committee had considered the said report and the General Assembly had issued a resolution thereon.

76. Against that background, the Board reviewed the issue of the creation of a non-discriminatory and inclusive working environment for staff members with disabilities at the entities covered in the present report.[16] The Board noted that nine entities (ITC, UN-Habitat, UNITAR, UNOPS, UNRWA, UNFPA, UN-Women, ICTY and the International Residual Mechanism for Criminal Tribunals) had no specific guideline or policy for persons with disabilities. Such a guideline or policy would be the first step towards making United Nations entities inclusive and accessible to all. Therefore, it is important that all entities should come up with a specific guideline or policy on making the workspace inclusive and accessible for all.

77. An inclusive United Nations also means that persons with disabilities should have an equal opportunity to join the organization. The Board noted that nine entities (United Nations (Vol. I), ITC, UN-Habitat, UNICEF, UNODC, UNOPS, UNRWA, UNFPA and UN-Women) could not provide information on the number of staff with disabilities recruited over the past five years. Similarly, five entities (UNU, UNITAR, UNJSPF, ICTY and the International Residual Mechanism for Criminal Tribunals) reported that no staff members with disabilities had been recruited over the past five years. This shows that the entities are not monitoring whether their recruitment process is giving equal opportunity to persons with disabilities.

78. Other than ITC and UN-Habitat, no other entity had the access audit done for their premises. The access audit would examine the difficulties in accessing the workspace and ways to improve it to make it accessible for persons with disabilities.

79. The issues noticed by the Board in human resources management are discussed below.

80. The Board noted the good work done by United Nations (Vol. I) entities to make the United Nations more friendly towards staff members with disabilities. The Board noted, however, that the administrative instruction for the implementation of the Secretary General's bulletin on the subject had not yet been finalized and that the focal point required to be appointed in that regard had not yet been appointed. The Board further noted that the review of the implementation of the bulletin due after two years of its implementation had not been conducted.

81. UNODC had established two focal points in Vienna, whereas special focal points for personnel in the field offices did not exist. The headquarter focal points, with the help of UNODC field office representatives, were performing an assessment of local standards and existing coordination arrangements with the United Nations country teams on the matter. Furthermore, UNODC had set no standards for accessibility of its field offices, neither for offices administered by UNODC nor for shared offices in United Nations common premises.

[16] UNHCR, the United Nations Capital Development Fund and ICTR were not included in the analysis.

82. The Board noted that UN-Habitat had not appointed the focal point for people with disabilities and hence no formal coordination and records had been maintained on the employment of people with disabilities. UN-Habitat informed the Board that currently the Chief of Human Resources Management Services and the Chief Medical Officer were the two officers who were dealing with disabled colleagues at all entities residing in Nairobi. However, the Board noted that those officers did not have the records of UN-Habitat staff with disabilities and the special facilities provided to them.

83. The Board observed that UNOPS had neither formulated its own specific policy guidelines similar to those contained in ST/SGB/2014/3 nor issued any administrative instructions to implement the provisions of that bulletin. The Board further noted that UNOPS did not have data on its current staff members with disabilities, persons with disabilities recruited by or resigning from (with reasons for quitting) UNOPS and requests for reasonable accommodation or feedback on access-related problems with their workplaces. The Board is of the opinion that the availability of those data would help improve policymaking and implementation of accessibility activities with the participation of staff with disabilities, towards creation of a non-discriminatory and inclusive working environment for staff members with disabilities.

J. Procurement and contract management

84. Long-term supply contracts are important for any service or delivery organization. Such contracts ensure reduced costs, increased efficiency and communication with vendors, stable pricing, improved supply chain management and continuous improvement in the quality of the product.

85. The Board reviewed the procurement management of the entities[17] (see table 11). In total procurement made by the different entities, the share of services and supplies procured was 48 per cent and 52 per cent, respectively. All entities had long-term contracts for standard items that they purchased. The Board noted that three entities (UNEP, UNFPA and UN-Habitat) could not provide information on the purchases made through the long-term contracts. The remaining 15 entities made 45 per cent of purchases through long-term supply contracts. Among entities, the range was 11 per cent to 100 per cent. Interestingly, many entities did not monitor the purchases of standard items done outside of long-term contracts.

Table 11
Procurement management
(Amount in millions of dollars)

Entity	*Total procurement by the entity*	*Procurement of services*	*Procurement of goods*	*Does the entity have system/long-term contracts for standard items*	*Amount of purchases done through system/long-term contracts*	*Procurement through system/long-term contracts as a percentage of total procurement*	*Purchases of standard items for which system/long-term contracts exist but have not been used*
United Nations Vol I	1 361.15	1 275.39	85.76	Yes	162.02	12	Not available
United Nations peacekeeping operations	1 899.38	601.39	1 297.98	Yes	953.11	50	Not available

[17] Except ICTR (closed) and UNODC (which uses the United Nations Office at Vienna for its procurement services).

Entity	*Total procurement by the entity*	*Procurement of services*	*Procurement of goods*	*Does the entity have system long-term contracts for standard items*	*Amount of purchases done through system long-term contracts*	*Procurement through system long-term contracts as a percentage of total procurement*	*Purchases of standard items for which system long-term contracts exist but have not been used*
ITC	9.29	8.39	0.90	Yes	5.30	57	Not available
United Nations Capital Development Fund	21.6	21.4	0.2	Yes	17.2	80	Not available
UNDP	1 697.47	1 105.86	591.60	Yes	848.73	50	Not available
UNEP	17.01	15.90	1.11	Yes	Not available	Not available	Nil
UNFPA	281.96	126.33	155.62	Yes	Not available	Not available	Not available
UN-Habitat	2.37	1.58	0.78	Yes	Not available	Not available	Not available
UNICEF	3 518.63	881.99	2 636.64	Yes	2647.98	75	Not available
UNITAR	2.24	2.16	0.09	Yes	1.13	50	Nil
UNHCR	1 180.00	617.40	562.60	Yes	194.00	16	Not available
UNJSPF	0.03	0.03	0.00	Yes	0.03	100	Nil
UNOPS	900.18	569.12	331.06	Yes	200.43	22	Not available
UNRWA	288.56	145.32	143.24	Yes	30.95	11	9.63
UNU	1.99	1.82	0.16	Yes	1.35	68	Nil
UN-Women	27.00	17.02	9.97	Yes	9.59	36	0.71
ICTY	22.60	22.60	0.00	Yes	22.60	100	Nil
International Residual Mechanism for Criminal Tribunals	11.08	11.08	0.00	Yes	11.08	100	Nil

Source: Information provided by the different entities.

86. The issues noticed by the Board in procurement and contract management are discussed below.

87. The Board examined 278 contracts of consultants to check compliance with ITC regulations and rules concerning the hiring of consultants. It emerged that in 204 of those contracts (73 per cent), only one candidate was considered for the job of consultant during the selection process. The main justifications cited were "lack of specialized resources/unavailability of other candidates for the proposed period/prior experience at ITC/substantive areas". This prevented ITC from ensuring a competitive selection process in the hiring of consultants.

88. Since the introduction of Umoja at UNODC in November 2015, the Procurement Unit has become aware of cases of goods delivered without purchase orders (ex post facto). As at November 2016, the Procurement Unit commenced recording the reported ex post facto cases. During the period from 1 November 2016 to 31 March 2017, the number of recorded cases amounted to 121 ($1.1 million). Most of the reported cases came from field offices. The Board held that there was no adequate technical oversight over the field offices to ensure that procurement activities were in line with the financial and procurement rules and regulations.

89. There were discrepancies in the vendor master database maintained in supply division and country offices of UNICEF visited by the Board. Further, there was no system of periodic review of the vendor master database. As the vendor master record is the primary data for procurement, the correctness and accuracy of those data is essential to identifying the correct vendors.

K. Travel management

90. Travel is a major part of expenses for an entity. In its previous concise summary reports, the Board has examined the travel management of the entities and reported the concerns of the Board in its various audit reports.

91. The status of the travel policy in the different entities is discussed in table 12.[18] The Board noted that, except for UNITAR, all entities covered in the present report had a defined policy on the advance booking of travel tickets. The Board also noted that entities had different policies for advance booking, which varied from 7 days in UNOPS to 21 days in UNDP, UNICEF and other entities. The United Nations followed the advance travel booking policy of 16 days; however, the Umoja system required submitting travel details by 21 days before travel.

92. In its report on standards of accommodation for air travel (A/71/822), the Advisory Committee on Administrative and Budgetary Questions expressed its concern over the low compliance rate with the advance purchase policy directives and encouraged stronger efforts in that regard. Review of compliance with the advance travel booking policy revealed that six entities[19] (United Nations Capital Development Fund, UNDP, UNFPA, UNICEF, UNOPS and UN-Women) did not have data on compliance with the advance travel booking policy. In the absence of data on compliance, it would not be possible for entities to effectively enforce the policy. In view of the concern expressed by the Committee, it was important for all the entities to effectively monitor compliance with the advance purchase policy.

93. In its report on standards of accommodation for air travel, the Advisory Committee on Administrative and Budgetary Questions reiterated that resources for official travel should be utilized judiciously in the interest of the Organization and that, before official travel was authorized as a means to implement mandated activities, full account of its cost-effectiveness and the impact on productivity resulting from prolonged absences from the office while travelling should be taken into account to determine whether other means of representation and methods of communication could be utilized instead. The Committee also emphasized that the primary consideration in authorizing official travel should be whether direct face-to-face contact was necessary for mandate implementation. If not, then alternative methods should be employed. The Board examined the utilization of alternative methods by the entities. Fifteen entities[20] claimed to monitor the possibility of using video teleconferencing and other alternative modes to minimize travel. When asked about the savings achieved through the use of video teleconferencing and other alternative methods, however, no entity could give the amount of savings achieved. Thus, it is evident that no entity is effectively monitoring the use of alternative methods to avoid travel.

[18] Except ICTR.

[19] UNU has not recommended a timeline for the advance purchase of travel tickets. Therefore, it also did not have any data related to compliance with a travel timeline. Nevertheless, its travel policy recommends the booking of travel tickets as early as possible.

[20] United Nations (Vol. I), United Nations peacekeeping operations, ITC, United Nations Capital Development Fund, UNDP, UNEP, UN-Habitat, UNHCR, UNJSPF, UNOPS, UNRWA, UNU, UN-Women, ICTY and the International Residual Mechanism for Criminal Tribunals.

Table 12
Travel management

Entity	*Does the entity have a defined policy on the advance booking of travel tickets?*	*As per the policy, how many days in advance of travel is the travel ticket to be booked?*	*Percentage of travel tickets booked as per the policy*	*Does the entity monitor the possibility of using teleconferencing, video teleconferencing and other modes to minimize travel?*
United Nations (Vol. I)	Yes	16 days	26.2	
United Nations peacekeeping operations	Yes	16 days	44.56	Yes
ITC	Yes	16 days	30	Yes
United Nations Capital Development Fund	Yes	21 days	Not available	Yes
UNDP	Yes	21 days	Not available	Yes
UNEP	Yes	21 days	40	Yes
UNFPA	Yes	21 days	Not available	No
UN-Habitat	Yes	16 days	14.43	Yes
UNICEF	Yes	21 days	Not available	No
UNITAR	No	–	–	No
UNHCR	Yes	16 days	30	Yes
UNJSPF	Yes	16 days	30.20	Yes
UNODC	Yes	16 days	43.90	No
UNOPS	Yes	7 days	Not available	Yes
UNRWA	Yes	15 days	37	Yes
UNU	Yes	No recommended timeline	Not available	Yes
UN-Women	Yes	15 days	Not available	Yes
ICTY	Yes	16 days	43	Yes
International Residual Mechanism for Criminal Tribunals	Yes	17 days	27	Yes

Source: Information provided by the different entities.

94. The issues noticed by the Board with regard to travel management are discussed below.

95. Between April and December 2016, a total of 2,087 trips were undertaken by ITC, of which 1,460 trips (70 per cent) were not processed within 16 days of travel. In 368 out of the above 1,460 trips (25 per cent), a justification for not processing the travel request within 16 days was not available.

96. UNICEF policy states that the traveller and the supervisor must aim to book travel at least 21 days before the travel date. The Board analysed the available data for the New York headquarters region and found that purchases of tickets 21 days in advance were made with respect to 74.58 per cent of travel bookings.

97. For UN-Habitat, of the 2,398 approved travel requests for January to September 2016, 2,067 (86 per cent) did not comply with the policy for purchase of tickets 16 days in advance of travel. Delays in issuing tickets were attributed mainly to delays by staff members in submitting travel requests to the certifying officer and delays by certifying officers in approving and submitting the approved requests to UNON. The Board also noted that 367 travel requests had been approved after the date of travel. Those included 24 requests (7 per cent) which had been submitted by staff members 22 to 65 days before the date of travel.

98. In the International Residual Mechanism for Criminal Tribunals, of the 281 trips in 2016, 205 did not comply with the requirement of purchase of tickets at least 16 days before the commencement of travel. Of those 205 trips, 53 were for human resources and entitlement travel, which could have been foreseen and the related tickets purchased in advance to avoid delays.

99. At UN-Women, in five out of the six field offices visited, the Board noted that 164 (87 per cent) of 188 travel requests had been submitted to the processing unit within 15 days prior to the date of travel. The Board also noted that liquidation of 137 (39 per cent) of 349 travel claims had been delayed for more than two weeks after completion of the respective travel missions.

100. Travel arrangements fall under a common shared services framework in which the Travel, Shipping and Visa Unit of the United Nations Office at Nairobi provides travel processing services to UNEP. The arrangement requires travellers to submit travel requests 21 days before the date of travel for the process to be finalized within 16 days before travel. The Board reviewed all travel requests for nine months from 1 January to 30 September 2016 and noted that 3,755 staff travel requests had been approved for travel, of which 2,185 requests (58 per cent) related to tickets issued less than 16 calendar days before travel.

101. Out of a total of 256 trips costing $2.42 million pertaining to UNOPS headquarters personnel in 2016, tickets for 36 trips, costing $0.22 million, had not been booked at least seven days in advance. The Board noted that bookings initiated less than seven days in advance of departure had not been captured in reports from the travel tool.

III. Implementation of outstanding recommendations

102. In every audit report, the Board analyses various issues during the audit and makes recommendations. The recommendations are addressed at improving the functioning of an entity. From time to time, the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee have expressed concern over the slow rate of implementation of the Board's recommendations and have requested the Secretary-General and the executive heads of the funds and programmes of the United Nations to ensure full implementation of the recommendations. The Board reviewed the status of old recommendations (see table 13) and noted that the overall rate of implementation of the old recommendations had increased to 45 per cent in 2016 from 43 per cent in 2015.

103. The Board is concerned about the number of recommendations pending for more than two years. There are 53 recommendations that have been pending for more than two years, which is 9 per cent of the total recommendations outstanding as at 31 December 2015. This shows that the Administration needs to work more seriously towards implementing these old recommendations. The Administration cited reasons such as delays in formulating policy, implementation and development of eTools for these long-pending recommendations.

Table 13
Status of previous audit recommendations

Entity	*Number of previous audit recommendations as at end of financial period*		*Fully implemented during the period*		*Under implementation during the period*		*Not implemented during the period*		*Overtaken by events during the period*		*Number of recommendations pending for more than two years*[a]
	2016	*2015*	*2016*	*2015*	*2016*	*2015*	*2016*	*2015*	*2016*	*2015*	
United Nations (Vol. I)	98	63	17	8	66	22	10	32	5	1	23
United Nations peacekeeping operations	63	63	39	33	16	25	1	2	7	3	6
ITC	14	18	2	13	12	4	0	0	0	1	1
United Nations Capital Development Fund	10	16	6	12	2	3	1	0	1	1	0
UNDP	40	31	29	15	10	14	0	2	1	0	0
UNEP	23	14	15	4	6	10	1	0	1	0	0
UNFPA	30	20	15	14	15	6	0	0	0	0	0
UN-Habitat	13	20	4	16	9	4	0	0	0	0	3
UNICEF	36	23	24	9	11	14	0	0	1	0	1
UNITAR	19	13	10	2	9	10	0	1	0	0	2
UNHCR	47	34	9	6	28	25	0	0	10	3	3
UNJSPF	26	12	5	3	20	7	1	2	0	0	3
UNODC	38	27	11	8	18	11	0	1	9	7	1
UNOPS	37	43	14	24	23	18	0	1	0	0	4
UNRWA	67	71	38	25	26	44	1	1	2	1	5
UNU	17	14	8	10	7	4	0	0	2	0	1
UN-Women	30	19	25	6	5	13	0	0	0	0	0
ICTR	0	7	0	5	0	0	0	0	0	2	0
ICTY	6	7	3	6	3	0	0	0	0	1	0
International Residual Mechanism for Criminal Tribunals	5	0	3	0	2	0	0	0	0	0	0
Total	**619**	**515**	**277**	**219**	**288**	**234**	**15**	**42**	**39**	**20**	**53**
Percentage			**45**	**43**	**47**	**45**	**2**	**8**	**6**	**4**	**9**

Source: Audit reports of the Board.

[a] Recommendations made for audit of financial statements of 2013 or earlier.

IV. Acknowledgement

104. The Board wishes to express its appreciation for the cooperation and assistance extended to it and its staff by the United Nations Secretariat and the funds and programmes.

(*Signed*) Shashi Kant **Sharma**
Comptroller and Auditor General of India
Chair of the Board of Auditors

(*Signed*) Kay **Scheller**
President of the German Federal Court of Auditors

(*Signed*) Mussa Juma **Assad**
Controller and Auditor General
of the United Republic of Tanzania

Annex I

Organizations

Organization	*Lead auditor*
United Nations (Vol. I)	India
United Nations peacekeeping operations	Germany
International Trade Centre	India
United Nations Capital Development Fund	United Republic of Tanzania
United Nations Development Programme	United Republic of Tanzania
United Nations Environment Programme	United Republic of Tanzania
United Nations Population Fund	United Republic of Tanzania
United Nations Human Settlements Programme	United Republic of Tanzania
United Nations Children's Fund	India
United Nations Institute for Training and Research	Germany
Office of the United Nations High Commissioner for Refugees	Germany
United Nations Joint Staff Pension Fund	India
United Nations Office on Drugs and Crime	Germany
United Nations Office for Project Services	India
United Nations Relief and Works Agency for Palestine Refugees in the Near East	United Republic of Tanzania
United Nations University	Germany
United Nations Entity for Gender Equality and the Empowerment of Women	United Republic of Tanzania
International Criminal Tribunal for Rwanda	United Republic of Tanzania
International Tribunal for the Former Yugoslavia	United Republic of Tanzania
International Residual Mechanism for Criminal Tribunals	United Republic of Tanzania

Annex II

Explanation of types of audit opinions

	Modified		
Unmodified unqualified	*Qualified*	*Adverse*	*Disclaimer*
An unmodified opinion implies that the financial statements of the auditee were prepared, in all material respects, in accordance with the applicable financial reporting framework, i.e., the International Public Sector Accounting Standards, which have been adopted by the United Nations and its funds and programmes.	A qualified opinion implies that the auditor, who, having obtained sufficient and appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material, but not pervasive, to the financial statements, or that the auditor is unable to obtain sufficient appropriate audit evidence on which to base an opinion on specific areas, but concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive. Therefore an auditor expresses an opinion on the fair presentation of financial statements, but with an exception only for the area for which he/she did not get sufficient audit evidence.	An adverse opinion implies that misstatements, individually or in the aggregate, are both material and pervasive to the financial statements, based on sufficient appropriate audit evidence.	A disclaimer of opinion is issued when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, normally due to scope limitation, and concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive. A disclaimer of opinion shall also be issued when, in extremely rare circumstances involving multiple uncertainties, the auditor concludes that, notwithstanding his or her having obtained sufficient appropriate audit evidence regarding each of the individual uncertainties, it is not possible to form an opinion on the financial statements owing to the potential interaction of the uncertainties and their possible cumulative effect on the financial statements.

Note: "Emphasis of matter" is to draw users' attention to a matter presented or disclosed in the financial report that, in the auditor's judgement, is of such importance that it is fundamental to users' understanding of the financial report. "Other matters" is to draw attention to any other matter that is relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report.

Annex III

Sustainable Development Goals and United Nations entities

	ITC	*United Nations Capital Development Fund*	*UNDP*	*UNEP*	*UNFPA*	*UN-Habitat*	*UNICEF*	*UNITAR*	*UNODC*	*UNOPS*	*UNRWA*	*UNU*	*UN-Women*	*ICTY*	*International Residual Mechanism for Criminal Tribunals*
1. Has the entity formulated a long-term strategy on its role in the implementation of the Sustainable Development Goals?	No[a]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No[b]	Yes	No	No
2. If the entity has formulated such a strategy:															
• Has it identified the specific Goals that would be addressed by the entity?	N/A[c]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A	N/A	Yes	N/A	N/A
• Has it identified the other United Nations entities with which it has to cooperate or coordinate its efforts on specific Goals?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	No	N/A	N/A	N/A	N/A	Yes	N/A	N/A

	ITC	United Nations Capital Development Fund	UNDP	UNEP	UNFPA	UN-Habitat	UNICEF	UNITAR	UNODC	UNOPS	UNRWA	UNU	UN-Women	ICTY	International Residual Mechanism for Criminal Tribunals
• Is the strategy supported by detailed operational plans with key performance indicators and periodic targets against such indicators?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A	N/A	Yes	N/A	N/A
• Is the strategy supported by clearly earmarked budget allocations for supporting implementation of the Goals?	N/A	Yes	Yes	No	Yes	Yes	Yes	Yes	N/A	N/A	N/A	N/A	Yes	N/A	N/A
• Is the strategy supported by a robust monitoring mechanism to periodically review the progress made by the entity on the Goals?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A	N/A	Yes	N/A	N/A

	ITC	*United Nations Capital Development Fund*	*UNDP*	*UNEP*	*UNFPA*	*UN-Habitat*	*UNICEF*	*UNITAR*	*UNODC*	*UNOPS*	*UNRWA*	*UNU*	*UN-Women*	*ICTY*	*International Residual Mechanism for Criminal Tribunals*
3. If the entity has not formulated such a strategy, does the entity still support implementation of the various Goals through ad hoc action, in the absence of a long-term strategy?	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	Yes	N/A	Yes	Yes

Note: The United Nations (Vol. I) and UNJSPF are not included in the table above owing to their nature and complexity of operations. In the case of UNHCR, this topic will be elaborated upon in an audit in one of the next several years.

[a] ITC is preparing its new strategy (for the period 2018-2021) in 2017. ITC defined the Sustainable Development Goals to which it contributes in 2015. All ITC programmes and projects contribute to specified targets of the Goals, which are presented in the operational plan of ITC.

[b] UNU has not compiled a specific long-term strategy with regard to its role in implementation of the Goals or included the Goals explicitly among its priority themes in the current strategic plan (prepared in 2014). Nevertheless, most, if not all, of the institutes of UNU, through their research activities, address specific Goals or aspects thereof and are strongly involved in global networks and initiatives to implement the Goals.

[c] N/A means not applicable.

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General Assembly

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Seventy-second session
Item 134 of the provisional agenda*
Financial reports and audited financial statements, and reports of the Board of Auditors

Concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the annual financial period 2016

Note by the Secretary-General

Corrigendum

Replace table 6 with the table below.

Table 6
Status of employee benefit liabilities in different entities

(Thousands of United States dollars)

Entity	Total employee benefit liability[a]			Total liabilities (2016)	Employee benefit liabilities as a percentage of total liabilities (2016)	Does the entity have funding arrangements for employee benefit liabilities?
	2016	2015	Increase or decrease			
United Nations (Vol. I)	4 450 164	4 270 117	Increase	5 397 462	82.45	No
United Nations peacekeeping operations	1 744 456	1 606 438	Increase	4 548 585	38.35	No
ITC	90 316	79 434	Increase	138 923	65.01	No
United Nations Capital Development Fund	10 304	9 749	Increase	10 986	93.79	Yes
UNDP	1 319 993	1 254 611	Increase	2 229 431	59.21	Yes
UNEP	146 077	137 715	Increase	336 294	43.44	No
UNFPA	329 240	302 663	Increase	434 917	75.70	Yes
UN-Habitat	41 551	38 469	Increase	94 412	44.01	No
UNICEF	1 236 273	1 136 241	Increase	4 351 505	28.4	Partial
UNITAR	9 004	8 574	Increase	10 931	82.37	Partial
UNHCR	746 195	701 905	Increase	939 706	79.41	Yes
UNJSPF	76 736	70 358	Increase	227 072	33.79	Yes
UNODC	110 523	101 904	Increase	267 691	41.29	Yes

* A/72/150.

17-15657 (E) 080917

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Entity	Total employee benefit liability[a] 2016	2015	Increase or decrease	Total liabilities (2016)	Employee benefit liabilities as a percentage of total liabilities (2016)	Does the entity have funding arrangements for employee benefit liabilities?
UNOPS	97 720	89 068	Increase	1 505 185	6.49	Yes
UNRWA	745 860	697 436	Increase	830 262	89.83	No
UNU	14 317	13 312	Increase	83 869	17.07	Yes
UN-Women	78 751	74 461	Increase	109 818	71.71	Yes
ICTY[b]	41 116	45 539	Decrease	79 053	52.01	Yes
International Residual Mechanism for Criminal Tribunals	61 803	14 692	Increase	89 547	69.02	Yes

Source: Financial statements and information provided by the different entities.

[a] Excluding pension liabilities.

[b] Excluding judges' benefits liabilities.

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General Assembly

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Seventy-second session
Item 73 (a) of the provisional agenda*
Promotion and protection of human rights

Implementation of human rights instruments

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Chairs of the human rights treaty bodies on their 29th meeting, held in New York from 26 to 30 June 2017, pursuant to Assembly resolution 57/202.

* A/72/150.

17-12311 (E) 160817

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Report of the Chairs of the human rights treaty bodies on their 29th meeting

Summary

The General Assembly, in its resolution 57/202, requested the Secretary-General to submit to the Assembly the reports of the Chairs of the human rights treaty bodies on their periodic meetings, convened annually pursuant to Assembly resolution 49/178. The present document contains the report of the 29th meeting of the Chairs of the treaty bodies, which was held from 26 to 30 June 2017. The meeting was convened in New York in the light of the call of the Assembly in its resolution 68/268 for strengthened interaction with States. The Chairs discussed, among other topics, the problem of late and non-reporting by States parties, procedures of the human rights treaty bodies for following up on concluding observations and views and a common approach to engagement with national human rights institutions. Welcoming all initiatives that seek to collect innovative ideas in the light of the review of the treaty body system by the Assembly in 2020, in accordance with paragraph 41 of resolution 68/268, the Chairs reiterated their commitment to remain engaged at all stages of the various processes. They also held consultations with States, civil society organizations and United Nations entities. The decisions and recommendations of the Chairs are contained in section VI of the present report.

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I. Introduction

1. The 29th meeting of the Chairs of the human rights treaty bodies was held in New York from 26 to 30 June 2017. As 26 June was an official holiday at the United Nations in New York, the Chairs met outside United Nations premises for informal meetings. The meeting of the Chairs is a forum for the Chairs of treaty bodies to maintain communication and dialogue with each other on common issues and problems, first called for by the General Assembly in 1983 in its resolution 38/117. The Assembly, in its resolution 57/202, requested the Secretary-General to submit to the Assembly the reports of the Chairs of the human rights treaty bodies on their periodic meetings. In paragraph 38 of its resolution 68/268, the Assembly further encouraged the human rights treaty bodies, with a view to accelerating the harmonization of the treaty body system, to continue to enhance the role of their Chairs in relation to procedural matters, including with respect to formulating conclusions on issues related to working methods and procedural matters, promptly generalizing good practices and methodologies among all treaty bodies, ensuring coherence across the treaty bodies and standardizing working methods.

2. The meetings of the Chairs, convened annually pursuant to General Assembly resolution 49/178, are generally held on a rotating basis in Geneva, New York and the regions. The meeting for 2017 was held in New York based on the recommendation by the Chairs in 2016 in the light of General Assembly resolution 68/268, and in particular of the call by States parties to strengthen interaction with them in New York and of the 2020 review of the resolution by the Assembly. For further information on the meetings, see www.ohchr.org/EN/HRBodies/AnnualMeeting.

3. The following documents served as background to the meeting:

(a) Provisional agenda and annotations (HRI/MC/2017/1);

(b) Note by the Secretariat on compliance by States parties with their reporting obligations to international human rights treaty bodies (HRI/MC/2017/2);

(c) Note by the Secretariat on procedures of the human rights treaty bodies for following up on concluding observations, decisions and views (HRI/MC/2017/4);

(d) Note by the Secretariat on a common approach to engagement with national human rights institutions (HRI/MC/2017/3).

II. Organization of the meeting

4. The meeting was attended by the following Chairs and one Vice-Chair: Anastasia Crickley, Committee on the Elimination of Racial Discrimination; Dalia Leinarte, Committee on the Elimination of Discrimination against Women; Jens Modvig, Committee against Torture; Jose Brillantes, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families; Malcolm Evans, Subcommittee on Prevention of Torture; Renate Winter, Committee on the Rights of the Child; Suela Janina (Vice-Chair), Committee on Enforced Disappearances; Theresia Degener, Committee on the Rights of Persons with Disabilities; Virginia Bras Gomes, Committee on Economic, Social and Cultural Rights; and Yuji Iwasawa, Human Rights Committee.

5. The Director of the Human Rights Council and Treaty Mechanisms Division of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Adam Abdelmoula, opened the meeting and welcomed the Chairs. He explained that the Division not only provides support to the 10 human rights treaty bodies to discharge their mandates, but also seeks to ensure full implementation of

the recommendations issued to States parties by advocating for the adoption of national follow-up action plans and by offering a range of technical assistance services. He recalled that through the field presences of OHCHR, the Office is engaging with national Governments, parliaments and the national mechanisms for reporting and follow-up to integrate treaty body recommendations in their national action plans. In addition, OHCHR is seeking to increase partnerships with United Nations country teams, United Nations agencies, civil society and national human rights institutions. Reiterating the relevance of the 2030 Agenda for Sustainable Development to the work of the United Nations human rights mechanisms, he informed the Chairs that OHCHR would like to reinforce this link by supporting the treaty bodies in their work related to the Sustainable Development Goals.

6. The Chief of the Human Rights Treaties Branch of OHCHR, Ibrahim Salama, reminded the Chairs that the annual meeting was an opportunity for them to reflect on the progress they have made in bringing greater coherence to the system, particularly in response to the adoption by the General Assembly of resolution 68/268. He recalled that in 2016 the Secretary-General submitted his first report on the status of the human rights treaty body system (A/71/118) to the Assembly. The report highlighted the need for additional resources for the work of the treaty bodies, particularly with regard to the increasing number of individual communications and inquiries, the webcasting of the public meetings of the treaty bodies and the work of the Subcommittee on Prevention of Torture.

7. Ms. Virginia Bras Gomes was elected the Chair of the 29th annual meeting. She welcomed the newly appointed Chairs to their first meeting of the treaty body Chairs and expressed her commitment to preserving and deepening the spirit of collegiality, commitment and leadership that had characterized the meetings in previous years. She recalled that the members of the treaty bodies were defined as independent experts who monitor the implementation by States of the international human rights norms and thus bring life to international norms and standards. She stated that, in the build-up to the 2018 biennial report of the Secretary-General on the implementation of resolution 68/268 and to the review of the treaty body system by the General Assembly in 2020, reading that definition had reminded her that it was a privilege to belong to the group of custodians of the respective treaties. She reminded the meeting that all treaty body members belonged to one system and one shared fundamental objective, which was to promote better implementation of all human rights on the ground and especially for those in need of the protection of States. She recalled that resolution 68/268 had several paragraphs encouraging or inviting either the treaty bodies or the chairs of the treaty bodies to undertake harmonization efforts and to lead such efforts. She remarked that the informal exchange among all Chairs on the first day of the annual meeting clearly demonstrated that they would continue to take this encouragement by the Assembly as a basis for their discussions, which would be grounded in the experience of their respective committees.

III. Summary of the discussions

A. Compliance by States parties with their reporting obligations to international human rights treaty bodies

8. The Secretariat had prepared a note on compliance by States parties with their reporting obligations (HRI/MC/2017/2) to facilitate the discussion of the Chairs. The Chairs expressed concern that late and non-reporting by States parties continued to undermine the effectiveness of the treaty body system. Some Chairs noted that the simplified reporting procedure has assisted reporting by State parties.

Others noted that the practice of examining States parties in the absence of a State party's report had been positive, as it usually yielded a response from the State and triggered submission of the report before it came up for consideration. The Chair of the Committee on Economic, Cultural and Social Rights shared the positive experience of the Committee in calling for a meeting with all States with overdue reports to encourage them to report. Such discussions with the States emphasized the importance of constructive dialogue and had led some States to send their reports. The Subcommittee on Prevention of Torture had a practice of writing to States parties whose compliance with the obligations set out in article 17 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment was substantially overdue. The Subcommittee makes public, on its website, the list of States with an outstanding obligation (www.ohchr.org/EN/HRBodies/OPCAT/Pages/Article17.aspx).

B. Follow-up to concluding observations and views

9. The meeting had before it a note by the Secretariat on procedures for the follow-up to concluding observations and views (HRI/MC/2017/4). The note details various existing follow-up procedures adopted by treaty bodies. At present, the Committee on the Rights of the Child is the only committee without any follow-up procedure. The Chairs reaffirmed the importance of follow-up procedures and decided to identify common elements in relation to the practices of their respective treaty bodies concerning follow-up to concluding observations and views. The Chairs reiterated that treaty bodies should consider recommending to States that they establish a national mechanism for reporting and follow-up where these do not exist.

C. Implementation by the treaty bodies of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines)

10. Taking stock of the adoption and implementation by the treaty bodies of the Addis Ababa guidelines (A/67/222 and Corr.1, annex I), the Chairs underscored the importance of the nomination and election process by States parties to ensure that independent, expert and diverse candidates are elected to serve on the treaty bodies. In that regard, they recalled the primary role of State parties to ensure that independent candidates were elected to the treaty bodies. At present, treaty bodies have adopted different approaches and practices to dealing with members with perceived or actual conflicts of interest. Each Chair shared his/her committee's most recent practices and experiences in implementing the guidelines, such as with regard to non-participation of members during: (a) preparations for the constructive dialogue; (b) the interactive dialogue with States; (c) drafting and adoption of concluding observations; (d) examination of the communications that relate to their own country or countries of nationality; and (e) during the field visits, particularly in the case of Subcommittee on Prevention of Torture.

D. Implementation by the treaty bodies of the guidelines against intimidation or reprisals (San José guidelines)

11. Andrew Gilmour, the Assistant Secretary-General for Human Rights and a senior official designated by the Secretary-General to lead the efforts within the United Nations system to address reprisals, attended the meeting of the Chairs to

deliver a few remarks about reprisals, particularly his efforts within the United Nations system to put a stop to intimidation and reprisals against those cooperating with the United Nations on human rights. He expressed deep concern over the growing number of reprisals against people cooperating with the United Nations and expressed his intention to work in close cooperation with all the treaty bodies. The Chairs conveyed their strong interest in strengthening coordination and cooperation with the Assistant Secretary-General in responding to reprisals.

E. Follow-up to General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the treaty body system

12. The Chairs expressed a strong commitment to remaining engaged in the treaty body strengthening process and, therefore, to playing a proactive role in the review of the treaty body system by the General Assembly in 2020, as envisioned in Assembly resolution 68/268. The Chairs also noted that the future of the treaty body system was heavily dependent on their own working methods and procedures and, therefore, progressive reform of the system demanded changes in their working methods and procedures. The Chairs also noted that the working methods and procedures of the treaty bodies contributed to a more effective system and that they had accordingly been engaged in progressively aligning their working methods and procedures in a number of areas.

13. The Chairs agreed that the parameters of any such envisioned reform of the treaty body system should ultimately: (a) strengthen protection of rights holders; (b) preserve the integrity of the treaty body system and of the independence of both the committees and their experts; (c) enhance implementation of treaty obligations and the related recommendations of treaty bodies; (d) balance the need for more aligned procedures and working methods with the specific mandates of each treaty body; (e) develop more predictable and coordinated calendars for examining States parties' reports; and (f) strengthen synergies within the treaty body system and with other human rights mechanisms.

F. Engagement of national human rights institutions with the treaty bodies

14. During their 28th meeting, the Chairs proposed to include in the agenda of their 29th annual meeting an item on harmonization of working methods for engagement with national human rights institutions. Following their constructive engagement with the representative of the Global Alliance of National Human Rights Institutions during the 29th meeting, the Chairs discussed a common treaty body approach to engagement with national human rights institutions. After closely reviewing the note by the Secretariat on this topic (HRI/MC/2017/3), the Chairs endorsed a number of recommendations in the areas of: (a) reporting; (b) communications; (c) inquiry; (d) follow-up to recommendations; (e) designating formal roles for national human rights institutions within human rights treaties; and (f) further avenues for engagement. All relevant recommendations are included in section VI.F of the present report.

IV. Consultations

A. Consultation with States

15. In paragraph 39 of its resolution 68/268, the General Assembly encouraged the human rights treaty bodies to strengthen the possibilities for interaction during the annual meetings of the Chairs of the treaty bodies with States parties to all human rights treaties, held in Geneva and New York, with a view to ensuring a forum for an open and formal interactive dialogue.

16. The Chairs held consultations with States parties on 28 June 2017. After a brief introductory statement by the Chair of the 29th meeting, each of the Chairs took the floor to introduce the treaty body they represented. In the exchange that followed, numerous States voiced strong support for the work of the treaty bodies and expressed their continued commitment to the treaty body system in the General Assembly. In line with resolution 68/268, States highlighted the need for increased harmonization of working methods of treaty bodies which would benefit all stakeholders. Citing the first progress report of the Secretary-General to the Assembly (A/71/118), which indicated that harmonization of working methods was progressing with varying results, several States expressed concern that it was becoming more difficult for States to comply with their reporting obligations; they therefore encouraged harmonization of working methods, increased use of the simplified reporting procedure, adoption of a calendar with a more even distribution of reporting obligations and adoption of more targeted recommendations.

17. Some States pointed out that the adoption of General Assembly resolution 68/268 was an important step in the right direction; however, it was not the end of the treaty body strengthening process. Those States suggested that synergies should be created among treaty bodies to increase their impact. The impact of the work of the treaty bodies could be enhanced through creative solutions and increased coordination and cooperation with special procedures mandate holders, OHCHR, national human rights institutions, civil society and regional bodies and that could lead to a viable solution to the challenges facing the treaty body system. States also highlighted that the implementation of the Addis Ababa guidelines was instrumental in ensuring the independence of the treaty body members. In reply, each of the Chairs dealt with a specific theme on behalf of all the Chairs, in order to reinforce the idea that they were speaking as representatives of a system, rather than only on behalf of their own treaty body.

B. Consultation with civil society organizations

18. The Chairs met with civil society organizations to explore ways and means of strengthening their engagement with the treaty bodies and to discuss the role of civil society in following up at the national level on recommendations and decisions emanating from the treaty bodies. Civil society organizations submitted written (and joint) submissions, which are available on the OHCHR website.

19. In a joint submission, 21 civil society organizations recalled that the current framework of the annual meeting of Chairs made it primarily a consultative body rather than a decision-making one. They therefore encouraged the Chairs to consider reviewing the mandate of the annual meeting with a view to improving the overall coordination among treaty bodies. Representatives of civil society organizations also encouraged action by the Chairs to harmonize working methods and to establish inter-committee working groups as necessary, to discuss topics for harmonization as indicated in General Assembly resolution 68/268. The

representatives also recommended that treaty bodies should play a proactive role in proposing ambitious reforms as part of the strengthening process, as well as consider the political risks of a new round of intergovernmental negotiations, particularly the implications on the independence and effectiveness of the treaty body system.

20. Welcoming statements on human rights defenders by the Committee on Economic, Social and Cultural Rights, the representatives of the civil society organizations encouraged the two treaty bodies that have not yet formally and fully adopted the San José guidelines to do so. Noting that the Sustainable Development Goals constituted the main international framework for international aid and sustainable development, participants encouraged all treaty bodies to consider the Goals, targets and indicators in their lists of issues and lists of issues prior to reporting, as well as make reference to the Goals in the constructive dialogues and concluding observations as they relate to relevant treaty provisions. The Chairs took good note of all the suggestions made by the civil society organizations, reiterating that some of those suggestions, for example concerning the mandate of the annual meeting of the Chairs, were not entirely dependent on their own decisions.

21. The treaty body Chairs also held a dialogue with Ms. Montserrat Solano Carboni, Ombudsperson of Costa Rica and Vice Chair of the Global Alliance of National Human Rights Institutions, to discuss ways to further enhance the engagement of national human rights institutions with the treaty bodies and to strengthen national implementation of treaty provisions.

C. Consultation with United Nations entities

22. The Chairs met with representatives of the United Nations agencies and entities on 29 June 2017. The Chairs acknowledged that the treaty body members greatly benefited from the oral and written briefings by United Nations entities; however, they also expressed concern regarding the lack of contribution in the area of economic, social and cultural rights. Various participants referred to their experiences in cooperating with the treaty bodies, particularly in the preparation of input for State reviews and follow-up to the concluding observations. The Development Operations Coordination Office highlighted that one of the challenges to United Nations country teams was that it was not always clear what was the best time to engage with the treaty bodies. The representative noted that OHCHR had started a practice of sending letters to all Resident Coordinators each year to signal treaty body and universal periodic reviews to country teams, which had been helpful to address the information gap.

23. The United Nations Development Programme (UNDP) highlighted that it was mandatory for all UNDP country offices to use a human-rights based approach, particularly in the planning phase. With regard to integrating treaty body outputs into the planning framework, sometimes the timing of the adoption of the concluding observations did not fit in with an ongoing programming cycle. Some United Nations agencies expressed concern that the proliferation of United Nations human rights recommendations posed practical challenges with regard to follow-up. They also highlighted that treaty body recommendations could be used in particular in the review framework for the Sustainable Development Goals, especially when a State was not reporting voluntarily on a yearly basis. Participants also discussed ways to enhance the follow-up to and impact of State reviews by treaty bodies, highlighting the potential for increased synergies between the normative work of treaty bodies and the implementation of their recommendations by States with the support of United Nations entities.

V. Other matters

A. Treaty bodies and the Sustainable Development Goals

24. A representative of the OHCHR New York Office provided a briefing on the interlinkages between the work of the treaty bodies and the Sustainable Development Goals. The Chairs spoke of the need to strengthen their efforts to integrate the Goals into their reporting guidelines, as well as into constructive dialogues and concluding observations.

B. Strategies for increasing the visibility of the treaty body system

25. The Chairs discussed the need to increase the visibility and knowledge of the work of the treaty bodies among States, civil society and United Nations entities. A representative of the OHCHR Geneva Office gave an overview of the progress achieved so far and proposed a communications strategy to increase the visibility and presence in national and social media.

VI. Decisions and recommendations

A. Role of the Chairs in the area of working methods and the follow-up to General Assembly resolution 68/268

26. The Chairs reiterated their support for strengthening and enhancing the effective functioning of the treaty body system as reflected in General Assembly resolution 68/268. The Chairs agreed to a common framework identifying elements that form the basis for aligned procedures and working methods, while recognizing the specificity of the practices of the various treaty bodies based on their respective treaties and mandates. The following areas of this framework have already been progressively addressed by the Chairs: (a) the constructive dialogue with States parties; (b) the adoption of more focused, targeted and implementable concluding observations; (c) the simplified reporting procedure; (d) the methodology for the consultation process for the elaboration of general comments; (e) the engagement with national human rights institutions; and (f) the implementation of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines). The Chairs also decided to identify further elements for discussion within their respective Committees that could enhance the alignment of working methods in the following areas: (a) follow-up on concluding observations and views; (b) inquiry procedures; (c) reprisals; and (d) remedies.

27. The Chairs requested OHCHR to prepare a document for discussion before the 30th annual meeting of Chairs identifying the progress achieved in aligning the working methods and practices of the treaty bodies in the various areas addressed in General Assembly resolution 68/268, as well as those areas on which the Chairs will continue to work towards enhanced alignment.

28. In that context, the Chairs recalled the encouragement by the General Assembly to the treaty bodies to continue to enhance the role of the Chairs in relation to procedural matters, including with respect to formulating conclusions on issues related to working methods, generalizing good practices and methodologies across all treaty bodies, ensuring coherence across the treaty bodies and standardizing working methods.

29. Welcoming all initiatives that seek to collect innovative ideas in the light of the 2020 review of the treaty body system by the General Assembly, in accordance with paragraph 41 of resolution 68/268, the Chairs reiterated that the views of the treaty bodies and their Chairs should be sought and they resolved to remain engaged at all stages of those processes. They agreed that the following parameters will be crucial in reviewing the sustainability of the measures taken and, if appropriate, deciding on further action to strengthen and enhance the effective functioning of the human rights treaty body system: (a) strengthened protection of rights holders; (b) preservation of the integrity of the treaty body system and of the independence of both the committees and their experts; (c) enhanced implementation of treaty obligations and the related recommendations of treaty bodies; (d) balancing the need for more aligned procedures and working methods with the specific mandates of each treaty body; (e) developing a more predictable and coordinated calendar for examining States parties' reports; and (f) strengthening synergies within the treaty body system and with other human rights mechanisms.

30. While welcoming the improvements resulting from General Assembly resolution 68/268, the Chairs reiterated the need for OHCHR to have the material and human resources necessary for the treaty bodies to perform their work as required by the treaties. In particular, they stressed that any further growth in the workload of the treaty body system cannot be absorbed within existing resources, in line with Assembly resolution 68/268 which provides a mechanism to adapt resources to workloads.

B. Ratification and reporting compliance by States

31. The Chairs called for the universal ratification by States of international and regional human rights treaties. Welcoming the note by the Secretariat on compliance by States parties with their reporting obligations to international human rights treaty bodies (HRI/MC/2017/2), the Chairs expressed concern regarding the large number of States whose reports were still overdue and the protection gap that created for rights holders.

32. The Chairs encouraged all States facing capacity constraints to solicit the technical assistance and advisory services of the OHCHR treaty body capacity-building programme created under General Assembly resolution 68/268, which specifically provides for technical assistance to States for reporting to the treaty bodies, and welcomed the efforts already undertaken to develop the capacities of States to implement the treaties, including by supporting national mechanisms for reporting and follow-up.

33. The Chairs also welcomed the efforts undertaken by United Nations country teams to submit country-specific information for the reporting processes of the treaty bodies, follow up on the implementation of their recommendations and facilitate country visits by treaty bodies, and invited country teams and individual United Nations agencies to continue intensifying those efforts.

34. The Chairs recommended that all treaty bodies, as appropriate, define objective criteria and align modalities for and promote the application of the simplified reporting procedure as a means to improve reporting compliance by States parties.

35. The Chairs reiterated that treaty bodies should consider recommending to States that they establish national mechanisms for reporting and follow-up, considering that the States that have established such national mechanisms

have increased their ability to report and engage with the international and regional human rights systems.

36. In addition, the Chairs suggested that treaty bodies consider meeting with States parties whose reports are more than 10 years overdue to assess their needs, and took note of the good practices of some treaty bodies in that regard.

37. The Chairs reaffirmed the decision taken at previous meetings to include reporting compliance by States parties as a standing item on the agenda of the annual meeting of the Chairs. They further requested OHCHR to continue to update the statistics on reporting compliance by States on its website.

C. Implementation of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines)

38. The Chairs appreciated the broad support for the Addis Ababa guidelines on the independence and impartiality of treaty body members and recommended that the implementation and use by all treaty bodies of the guidelines be ensured.

39. The Chairs also reiterated that States should refrain from nominating or electing persons to the treaty bodies whose independence and impartiality was compromised by the political nature of their affiliation with the executive branch of the State.

40. Members of treaty bodies should consequently avoid functions or activities which could be, or could be seen by a reasonable observer to be, incompatible with the obligations and responsibilities of independent experts under the relevant treaties. Encouraging further harmonization, the Chairs took note of good practices of treaty bodies in relation to the designation of country rapporteurs and the participation of treaty body members in training workshops before or following the consideration of the State party concerned, aimed to ensure that members continue to carry out their functions independently and impartially and are also seen to do so.

D. Implementation of the guidelines against intimidation or reprisals (San José guidelines)

41. The Chairs appreciated the broad support for the San José guidelines against intimidation or reprisals and recommended that all treaty bodies endorse and ensure the implementation of the guidelines.

42. The Chairs reiterated their recommendation that the rapporteur(s) or focal point(s) on reprisals appointed in the respective treaty bodies should work together to align the approaches taken to prevent intimidation and protect individuals and groups against reprisals in order to enhance consistency across the treaty body system, including through meetings as appropriate.

43. The Chairs also reaffirmed their decision, first made at their 26th meeting, to include reprisals as a standing item on the agenda of the annual meeting of the Chairs.

E. Follow-up to concluding observations and views

44. **Welcoming the note by the Secretariat on procedures of the human rights treaty bodies for following up on concluding observations, decisions and views (HRI/MC/2017/4), the Chairs exchanged views and decided to identify common elements in relation to the practices of their respective treaty bodies concerning follow-up to concluding observations, decisions and views.**

F. Common approach to engagement with national human rights institutions

45. **Following their constructive engagement with the representative of the Global Alliance of National Human Rights Institutions during their 29th meeting, the Chairs discussed a common approach by treaty bodies to engagement with national human rights institutions. The Chairs considered possible areas in a common approach to engagement with national human rights institutions as summarized in section IX of the note by the Secretariat contained in document HRI/MC/2017/3.**

46. **The Chairs decided to endorse the following recommendations:**

Reporting process

(a) **The Chairs recognized the particular value of national human rights institutions accredited with "A" status by the Global Alliance in the reporting process, while acknowledging that engagement with other specialized bodies is important. National human rights institutions are encouraged to cooperate with those bodies;**

(b) **In addition to the participation of national human rights institutions during the session, it is fundamental for national human rights institutions to have an opportunity to be involved at the pre-session stage. In that regard, public and private meetings with the institutions should be possible, depending on the situation in the country. National human rights institutions should also be encouraged to provide information for the formulation of the lists of issues for the dialogue with States. Written and oral contributions of national human rights institutions are encouraged at all stages of the State reporting process;**

Communications procedure

(c) **National human rights institutions should raise awareness and build capacity on the communications procedure, including promoting ratification by States of the necessary instruments. In addition:**

(i) **National human rights institutions could create a venue for dialogue with the State about the importance of the procedure and for victims to have access to such procedures at the international level;**

(ii) **National human rights institutions could facilitate or assist victims with filing petitions to the treaty bodies;**

(iii) **National human rights institutions could participate in the monitoring of the implementation of the remedies recommended in views in which violations have been found;**

Inquiry procedure

(d) The role of national human rights institutions is important at all stages of the inquiry procedure, while respecting the confidentiality of the proceedings. For example:

(i) National human rights institutions accredited with "A" status by the Global Alliance are important partners in the inquiry procedure and could provide support throughout the process, including in follow-up to the inquiry;

(ii) "A" status national human rights institutions are not the only actors in a situation. Often, there is no "A" status human rights institution in the country where serious human rights violations are occurring or they are not the only human rights body. Hence, engagement, as appropriate, with other institutions may be necessary;

(iii) Seeking engagement by the national human rights institution should be determined on a case-by-case basis by the treaty bodies during all stages of the inquiry process, including the preliminary assessment, the conduct of the inquiry (advisory role), during the country visit (to facilitate the visit and identify stakeholders, including witnesses and victims), and in follow-up to the recommendations;

(iv) During the preliminary assessment, national human rights institutions could provide information and help to assess it (advisory role);

(v) During the country visit, national human rights institutions could play an important role in facilitating the visit and in helping to identify stakeholders, including witnesses and victims;

(vi) The reporting responsibility rests with the treaty bodies, but national human rights institutions could play an important role in the follow-up of the recommendations of the treaty bodies by the State;

(vii) Confidentiality is critical to the inquiry process and is imposed by the relevant instruments. Maintaining confidentiality is closely related to the do-no-harm principle. Treaty bodies have the responsibility to uphold those principles, as do national human rights institutions engaged in the procedure. National human rights institutions accredited with "A" status by the Global Alliance in particular could play a role in the process as they would guarantee the established standards;

(viii) National human rights institutions accredited with "A" status by the Global Alliance could play an important role in preventing reprisals and providing witness protection;

Follow-up to recommendations

(e) Cooperation in relation to follow-up to recommendations could be further strengthened. For example:

(i) The development of a national action plan to follow up on recommendations would be worthwhile. States should be encouraged to seek the cooperation of national human rights institutions in the development of such plans and to implement recommendations in consultation with national human rights institutions and civil society;

(ii) The role of "A" status national human rights institutions should be recognized and further embedded in follow-up procedures and processes.

National human rights institutions should be formally invited to contribute to the follow-up of recommendations in their countries. Direct engagement by national human rights institutions with members of parliament, ministries and other public authorities is recommended;

(iii) National human rights institutions should communicate with States between reporting periods;

(iv) Follow-up visits by treaty bodies, organized in close consultation with national human rights institutions, would be welcome. Their effectiveness would relate to the timing of the conduct of the consultations;

(v) National human rights institutions should be encouraged to facilitate the dissemination of treaty body outputs. Accurate translation of treaty body outputs is essential and States should be encouraged to consult national human rights institutions in that regard;

National human rights institutions with formally designated roles within human rights treaties

(f) Cooperation with and among national human rights institutions, national monitoring mechanisms and national preventive mechanisms is important at the national level. In that respect:

(i) Further guidance on interaction with treaty bodies for national human rights institutions with more than one mandate, for example those also functioning as a monitoring and/or preventive mechanism, is needed;

(ii) The Global Alliance could play a role in offering such guidance in conjunction with the treaty bodies concerned.

47. The Chairs also welcomed modalities of engagement of national human rights institutions with other stakeholders. A variety of stakeholders need to be engaged and held to account in relation to the work of the treaty bodies. National human rights institutions could function as a bridge in facilitating such engagement. For example:

(a) Cooperation with, inter alia, national parliaments, the judiciary, bar associations, civil society, the business sector, academia, the media and religious leaders could be fostered by national human rights institutions;

(b) Cooperation with regional and international human rights and other regional organizations that do not have a specific human rights mandate could be fostered by national human rights institutions.

48. The Chairs further welcomed other avenues for engagement with national human rights institutions. Although some existing avenues for engagement are already positive, there is still room for strengthening them, including the following:

(a) The Global Alliance Subcommittee on Accreditation could refer to the concluding observations of the treaty bodies so as to acknowledge and assess the performance of national human rights institutions and their level of compliance with the Paris Principles. In that regard, the practice of including references to the compliance of national human rights institutions with the Paris Principles in concluding observations is considered to be a good practice;

(b) The Global Alliance should provide regular updates to the treaty bodies on its accreditation process;

(c) National human rights institutions should be encouraged to prioritize advocacy in relation to ratification of treaties and optional protocols and withdrawal of reservations;

(d) Enhanced awareness-raising for national human rights institutions of the early warning and urgent action procedures of the Committee on the Elimination of Racial Discrimination and the urgent action procedure of the Committee on Enforced Disappearances is encouraged;

(e) National human rights institutions should be encouraged to provide input for the development of general comments, including by participating in the days of general discussion and commenting on drafts posted for public comment on the websites of the treaty bodies;

(f) National human rights institutions should be encouraged to broadly disseminate general comments in their countries. OHCHR could further strengthen the timely notification of their issuance;

(g) Both national human rights institutions and treaty bodies play a role in the adoption of the San José guidelines. There are limitations on both sides: the do-no-harm principle must apply; and witnesses must be made aware of the limitations of both bodies;

(h) More regular and systematic interactive relationships or meetings, including in-person or audio/video meetings, between individual treaty bodies and national human rights institutions and the Global Alliance should be held whenever possible;

(i) Enhanced cooperation with the Global Alliance office in Geneva would be welcome.

49. The Chairs took note of the practice of the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Racial Discrimination to permit national human rights institutions to take the floor at the beginning and/or the end of the dialogue with a State party;

50. The Chairs also took note of the practice of some committees to encourage national human rights institutions to submit amicus curiae briefs to contribute to the information gathered by the treaty bodies in relation to individual communications, even though they may not be mandated to consider communications.

G. Remedies

51. The Chairs continued their exchange of views and decided to identify common elements with respect to the practices in the area of remedies in the different treaty bodies.

H. Inquiries

52. The Chairs continued their exchange of views with respect to the practices in the area of inquiries in the different treaty bodies and decided to further pursue that dialogue in order to promote increased alignment of the working methods of those treaty bodies with a mandate to conduct inquiries. They considered that it would help the alignment in relation to inquiry procedures if all treaty bodies undertaking country visits participated in this process, including the Subcommittee on Prevention of Torture.

I. Treaty bodies and the Sustainable Development Goals

53. **The Chairs welcomed the briefing provided by the OHCHR New York Office on the interlinkages between the work of the treaty bodies and the Sustainable Development Goals and took note of the practices of some committees of including references to the Goals in their lists of issues, lists of issues prior to reporting and concluding observations, as well as of efforts to integrate the Goals in their reporting guidelines.**

J. Human rights of young persons

54. **The Chairs recognized that the rights of young persons are protected under all international human rights treaties and recalled that all treaty bodies protect the human rights of young persons under their respective mandates.**

K. Global compact on migration

55. **The Chairs acknowledged the reassertion by Member States of their obligations under international human rights law in the New York Declaration for Refugees and Migrants (General Assembly resolution 71/1). They stressed that the global compact on migration, which is currently being negotiated as an outcome of the Declaration, must be grounded in and guided by existing international human rights norms and standards. They noted that while treaty bodies are encouraged, in accordance with their mandates, to support the State-led preparatory process for the compact, their direct engagement has not to date been sought. In order to further the capacity of the compact to protect and promote the human rights of all migrants, the Chairs urged that the treaty bodies be invited to participate in and contribute to all the consultations and ongoing processes.**

L. Agenda, location and chair of the 30th meeting of treaty body Chairs

56. **The Chairs decided to include the following items on the agenda of their 30th annual meeting:**

(a) **Follow-up to General Assembly resolution 68/268;**

(b) **General Assembly review of the treaty body system in 2020;**

(c) **Follow-up to concluding observations, decisions and views;**

(d) **Reporting compliance by States parties;**

(e) **Implementation of the Addis Ababa guidelines;**

(f) **Implementation of the San José guidelines;**

(g) **Treaty bodies and the Sustainable Development Goals;**

(h) **Inquiries;**

(i) **Additional issues arising in the work of the treaty bodies;**

(j) **Any other business.**

57. **The Chairs recalled that, in the light of General Assembly resolution 68/268, and in particular of the call by States parties to strengthen interaction**

with them in New York and of the 2020 review of the resolution by the Assembly, they had decided at their 28th meeting to hold the annual meetings of Chairs leading up to 2020 in New York. In that context, they also reiterated the wish to strengthen their relationship with the Secretary-General.

58. **The Chairs decided that, in accordance with the principle of rotation, the Chair of the 30th meeting of Chairs, in 2018, would be the Chair of the Committee on the Elimination of Racial Discrimination and the Vice-Chair would be the Chair of the Committee on the Elimination of Discrimination against Women.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, submitted in accordance with Human Rights Council resolution 34/19.

* A/72/150.

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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, the Special Rapporteur examines whether and in which circumstances the extra-custodial use of force by State agents amounts to torture or other cruel, inhuman or degrading treatment or punishment and how the prohibition of torture and other cruel, inhuman or degrading treatment or punishment applies to the development, acquisition, trade and use of weapons in law enforcement.

17-12326

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I. Background, rationale, scope and process

A. Background

1. In the past, the Special Rapporteur and other mechanisms against torture, including some of the most important treaty-based monitoring mechanisms,[1] have focused predominantly on preventing the use of torture and other cruel, inhuman or degrading treatment or punishment in "custodial" settings, that is, once persons have been arrested, interned, imprisoned or otherwise deprived of their liberty. The extent to which and how the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is applied to the use of force by State agents outside custodial settings ("extra-custodial" use of force) has not yet been systematically examined. This question is particularly relevant where State agents resort to unnecessary, excessive or otherwise unlawful force without necessarily infringing the right to life, for example, during arrest, stop and search or crowd control operations. While States must be in a position to use all lawful and appropriate means, including necessary and proportionate force, with a view to maintaining public security and law and order, experience shows that the use of force in insufficiently controlled environments carries a significant risk of arbitrariness and abuse. In his most recent report to the Human Rights Council (A/HRC/34/54), the Special Rapporteur expressed his intention to examine how the prohibition of torture and other cruel, inhuman or degrading treatment or punishment should be applied and interpreted in extra-custodial settings, particularly in view of potential justifications such as law enforcement, public security, crowd control or self-defence and the defence of others. The Special Rapporteur also expressed his intention to examine the extent to which the use of certain types of weapons, riot control devices or other means and methods of law enforcement would have to be considered intrinsically cruel, inhuman or degrading in the light of their immediate to long-term consequences.

B. Rationale

2. In examining the relationship between the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the international legal principles governing the use of force by State agents, and in developing concrete recommendations on the matter, the Special Rapporteur hopes to strengthen the capacity of States to ensure the effective prevention of and accountability for torture and other cruel, inhuman or degrading treatment or punishment, including in extra-custodial settings. Moreover, as a complement to existing international standards governing the use of force, the present report is aimed at contributing to the development of seamless guidance on the entire spectrum of the use of force, from non-lethal to deliberately lethal and from custodial to extra-custodial, and therefore at supporting States in complying with their relevant human rights obligations. The report is also aimed at facilitating synergies, both at the national and the international levels, between mechanisms tasked with protection against

[1] Most notably, both the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment foresee the oversight competences for the monitoring bodies established under the treaties (the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the national preventive mechanisms and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) only with regard to places where persons are deprived of their liberty (see Optional Protocol, arts. 1 and 19; Subcommittee guidelines on national preventive mechanisms, para. 28; and European Convention, art. 2).

torture and other cruel, inhuman or degrading treatment or punishment and those involved in overseeing and regulating the use of force more generally.

C. Scope

3. While the present report is focused on the extra-custodial use of force by State agents, its conclusions generally will also be relevant, mutatis mutandis, for non-physical forms of coercion and for ill-treatment committed by non-State actors. Owing to constraints of time and space, the Special Rapporteur intends to more systematically consider those issues in subsequent thematic reports. Moreover, in the present report the extra-custodial use of force under the law enforcement paradigm both in peacetime and in armed conflict is covered, but the use of force as a means of warfare under the hostilities paradigm is not examined. The terms "State agent" and "law enforcement official" will be used interchangeably to denote any person exercising, de jure or de facto, public authority on behalf of the State, whether of military or civilian status and whether appointed, elected, employed or contracted, including private security personnel.[2] Finally, the implications of the extra-custodial use of force are examined in the present report under human rights law only, and not under potentially applicable international humanitarian law.

D. Process

4. Building on the work undertaken by his predecessors and other mandate holders and mechanisms, the Special Rapporteur conducted extensive research and broad stakeholder consultations with academic experts and representatives of governments, international organizations and civil society organizations, including through a multi-stakeholder expert meeting held in Geneva on 1 and 2 May 2017 and a general call for submissions in response to a thematic questionnaire posted on the website of the Office of the United Nations High Commissioner for Human Rights from 29 May to 30 June 2017.[3] The present report reflects the resulting conclusions and recommendations of the Special Rapporteur.

II. Legal principles governing the use of force

5. Apart from prohibiting the arbitrary deprivation of life and providing a few principles on the lawful use of lethal force, human rights treaties do not expressly regulate the extra-custodial use of force.[4] Instead, the contemporary legal principles governing the use of force by law enforcement officials ("use of force principles") have been derived primarily from State practice and the application and interpretation of these very general treaty provisions in case law. The principles have been restated in two soft law instruments, namely, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials, and today can be regarded as general principles of

[2] Code of Conduct for Law Enforcement Officials, art. 1, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, endnote, albeit without mention of private security providers (on that matter, see A/HRC/32/39).

[3] See www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/ExtraCustodialUseForce.aspx.

[4] International Covenant on Civil and Political Rights, art. 6; American Convention on Human Rights, art. 4; African Charter on Human and Peoples' Rights, art. 4; and European Convention on Human Rights, art. 2.

law.[5] In particular, the use of force by State agents is governed by the following cumulative principles:

- Legality: any use of force must have a legal basis and pursue a lawful purpose.[6]
- Necessity: force must only be used when, and to the extent, strictly necessary for the achievement of a lawful purpose.[7]
- Proportionality: the harm likely to be inflicted by the use of force must not be excessive compared to the benefit of the lawful purpose pursued.[8]
- Precaution: law enforcement operations must be planned, prepared and conducted so as to minimize, to the greatest extent possible, the resort to force and, whenever it becomes unavoidable, to minimize the resulting harm.[9]

6. In order for the use of force by State agents to be lawful, full adherence to all of the above principles is required.

A. Principle of legality

7. According to the principle of legality, any use of force by State agents must pursue a lawful purpose and must be based on and regulated by national law.[10] Lawful purposes typically include effecting the arrest or preventing the escape of a person suspected of having committed a crime, self-defence or defence of others against an unlawful threat of death or serious injury, or dispersing violent assemblies. A further parameter of legality is the equal treatment of all persons before the law in accordance with the principle of non-discrimination (see A/HRC/26/36, para. 74, and A/HRC/31/66, para. 15). States must provide express authority for the use of force in their national law and must regulate the matter in line with their obligations under international law.

B. Principle of necessity

8. The principle of necessity requires that any use of force by State agents must be restricted to the least harmful means that can reasonably be expected to achieve the purpose pursued. Thus, law enforcement officials must apply non-violent means whenever possible and may use force only when, and only to the extent, strictly necessary to achieve a lawful purpose.[11]

9. The principle of necessity has a qualitative, a quantitative and a temporal aspect. In qualitative terms, any use of force must be "unavoidable" in the sense that non-violent or other less harmful means remain ineffective or without any promise of achieving the desired purpose.[12] In quantitative terms, whenever the use of force

[5] For an in-depth analysis of the use of force principles in law enforcement, see Nils Melzer, *Targeted Killing in International Law* (Oxford, Oxford University Press, 2008), pp. 83-239. See also A/HRC/26/36, paras. 59-73; A/HRC/31/66, paras. 50-66; International Committee of the Red Cross (ICRC), "Violence and the use of force", September 2015, chap. 2; and Stuart Casey-Maslen and Sean Connolly, *Police Use of Force under International Law* (Cambridge, United Kingdom, Cambridge University Press, 2017), chap. III.

[6] Code of Conduct, art. 8, and Basic Principles, principle 1. See also ICRC, "Violence and the use of force", p. 17.

[7] Code of Conduct, art. 3, and Basic Principles, principle 4.

[8] Code of Conduct, art. 3, and Basic Principles, principle 5 (a).

[9] Basic Principles, principles 2, 3 and 5 (a) and (b).

[10] Ibid., principle 1. See also A/HRC/26/36, para. 56.

[11] Code of Conduct, art. 3, and Basic Principles, principle 4.

[12] Basic Principles, principles 4 and 5.

is unavoidable, the degree to which and the manner in which force is employed may not be more harmful than strictly necessary.[13] Finally, in temporal terms, the use of force is unlawful if, at the moment of its application, it is not yet or no longer unavoidable to achieve the desired lawful purpose. Therefore, any law enforcement operation involving the use of force requires a constant reassessment of its necessity to achieve the desired purpose. Should the circumstances evolve so as to permit the achievement of that purpose through less harmful means, force may no longer be used.

C. Principle of proportionality

10. While the principle of necessity requires a factual assessment of the least harmful means that can be expected to achieve the desired purpose, the principle of proportionality involves an additional and separate value judgment as to whether the harm expected to result from the use of force can be justified in the light of the benefit of the desired purpose. Even if force is necessary for the achievement of that purpose, it can only be permissible if the resulting harm remains proportionate compared to the seriousness of the offence and the importance of the desired purpose.[14] Thus, irrespective of considerations of necessity, the requirement of proportionality defines an absolute upper limit for the force that might be permissible to achieve a specific lawful purpose (A/HRC/26/36, para. 66). The "harm" to be weighed in the proportionality assessment does not necessarily have to be of physical nature, but can also involve mental suffering and emotions of humiliation and distress.

11. A proportionality assessment must always be made in the light of the circumstances of each case. As a general rule, potentially lethal force must not be used except where strictly necessary to: (a) defend any person against the imminent threat of death or serious injury; (b) prevent the perpetration of a particularly serious crime involving grave threat to life; or (c) arrest a person presenting such a danger or prevent their escape. Intentionally lethal force may only be used when strictly unavoidable in order to protect life from an unlawful attack.[15] For example, even the aim of lawful arrest cannot justify the use of firearms to stop a thief or pickpocket not otherwise posing a threat to life and limb. In such cases, considerations of proportionality require that the risk of the suspect escaping arrest is to be preferred over the risk of causing the suspect's death or serious injury. Other factors that may be relevant in evaluating the degree of force that is proportionate include the individual's behaviour, age, gender and health.

D. Principle of precaution

12. Even if the use of force is necessary and proportionate in the immediate circumstances of a case, it may nonetheless be unlawful if it results from a failure to plan, organize and control operations so as to minimize harm, respect and preserve human life and avoid any excessive use of force.[16]

13. In particular, States should thoroughly train their police forces to avoid situations in which the use of force will become inevitable and equip them with various methods and types of weapons and ammunition allowing for a differentiated use of force, including "less lethal" incapacitating weapons and self-defensive

[13] Ibid., principle 5 (b).
[14] Ibid., principle 5 (a).
[15] Basic Principles, principle 9, and European Convention on Human Rights, art. 2 (2).
[16] Basic Principles, principles 2, 3 and 5 (a) and (b).

equipment such as shields, helmets, bulletproof vests and bulletproof means of transportation.[17] Moreover, law enforcement officials must constantly re-evaluate the situation with a view to avoiding unnecessary or excessive use of force. Whenever the use of force becomes unavoidable, law enforcement officials must ensure that assistance and medical aid is provided to any injured or affected persons at the earliest possible moment.[18]

14. In practice, the required standard of precaution does not impose an unrealistic burden but always relates to what is reasonably possible in the circumstances.

E. Policing of assemblies

15. Applying the principles of legality, necessity, proportionality and precaution to the particular context of policing assemblies, any decision to forcibly disperse a peaceful assembly or protest must be taken with due regard to the freedoms of assembly and of expression. In particular, article 21 of the International Covenant on Civil and Political Rights provides that "no restrictions may be placed on the exercise of [the right to peaceful assembly] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others". Moreover, it must be emphasized that individuals cannot lose their protection against torture and other cruel, inhuman or degrading treatment or punishment under any circumstances whatsoever, including in the context of violent riots or unlawful protests.[19]

F. Application in custodial settings

16. It should be noted that the above-mentioned principles govern the use of force, not only in extra-custodial settings, but also where riots, unrest or other violent incidents occur within places of detention.[20] Depending on the circumstances, they may also be relevant in determining the permissibility of invasive health and security procedures, such as the taking of bodily samples or a strip search.[21] In their relations with persons deprived of their liberty, law enforcement officials may not use force, except when strictly necessary for the maintenance of security and order within the institution or when personal safety is threatened, and they may not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury or when strictly necessary to prevent the escape of an inmate presenting a threat of death or serious injury.

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[17] Ibid., principles 2 and 18-20. See also Inter-American Court of Human Rights, *Nadege Dorzema et al. v. Dominican Republic*, Judgment of 24 October 2012, para. 85.

[18] Ibid., principle 5 (c).

[19] Ibid., principles 12-14. See also A/HRC/31/66, paras. 18-27 and 60-63; A/HRC/17/28, para. 42; Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, *Human Rights Handbook on Policing Assemblies* (Warsaw, 2016); OSCE Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly* (Warsaw, 2007); and Ralph Crawshaw, Stuart Cullen and Tom Williamson, *Human Rights and Policing*, 2nd revised ed. (Leiden, Martinus Nijhoff 2006), part II, chap. 4.

[20] Basic Principles, principles 15-17, and United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), rule 82 (1).

[21] See, on this dimension of article 3 of the European Convention on Human Rights, Nelson Mavronicola, "Crime, punishment and article 3 ECHR: puzzles and prospects of applying an absolute right in a penal context", *Human Rights Law Review*, vol. 15, No. 4 (December 2015), p. 721.

III. Prohibition of torture and "other" cruel, inhuman or degrading treatment or punishment

A. Status of the prohibition

17. The absolute and non-derogable prohibition of torture and cruel, inhuman or degrading treatment or punishment has been codified in a wide range of universal and regional instruments[22] and today is universally recognized as a core principle of customary international law.[23] The prohibition of torture is also one of the few norms of customary international law that is universally recognized as having attained peremptory status (jus cogens). Furthermore, the prohibition of torture, cruel, humiliating and degrading treatment "at any time and in any place whatsoever" is also included in article 3 common to the Geneva Conventions of 12 August 1949, which the International Court of Justice has held to reflect a general principle of law, namely, "elementary considerations of humanity".[24]

18. The absolute and non-derogable character of the prohibition entails that any use of force amounting to torture or other cruel, inhuman or degrading treatment or punishment is conclusively unlawful and cannot be justified under any circumstances,[25] whereas the peremptory character of the prohibition of torture means that any contradicting national administrative act or legislation, international agreement or judicial decision is automatically devoid of any legal effect.

19. States have a corollary obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture and cruel, inhuman or degrading treatment or punishment within their jurisdiction.[26] Wherever there is reasonable ground to believe that extra-custodial force amounting to torture or other cruel, inhuman or degrading treatment or punishment has been used, States have a duty to conduct a prompt and impartial investigation in order to ensure full accountability for any such act, including, as appropriate, administrative, civil and criminal accountability, and to ensure that victims receive adequate redress and rehabilitation.[27]

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[22] See, inter alia, the International Covenant on Civil and Political Rights, art. 7; the European Convention on Human Rights, art. 3; the American Convention on Human Rights, art. 5; the African Charter on Human and Peoples' Rights, art. 5; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984; the Inter-American Convention to Prevent and Punish Torture of 1985; and the Rome Statute of the International Criminal Court, art. 7. See also the prohibition of torture in the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977.

[23] See International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment of 30 November 2010, 50 ILM 37 (2011), para. 87; International Court of Justice, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012, para. 99; Human Rights Council resolution 8/8; and General Assembly resolution 70/146.

[24] International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Reports 1986*, pp. 14 and 112, with reference to International Court of Justice, *Corfu Channel* case *(United Kingdom of Great Britain and Northern Ireland v. Albania), ICJ Reports 1949*, pp. 4 and 22.

[25] See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 3; and Council of Europe, *Guidelines on human rights and the fight against terrorism* (Strasbourg, Council of Europe Publishing, 2002), art. IV.

[26] Convention against Torture, arts. 2 and 16.

[27] Ibid., arts. 4-9 and 12-14. On positive obligations, see also Association for the Prevention of Torture and Centre for Justice and International Law, *Torture in International Law: a guide to jurisprudence* (Geneva, 2008); and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 6-8.

B. Definition of torture

20. Torture has been defined in many universal and regional instruments, albeit not always in precisely identical terms.[28]

21. A definition of torture was set out in article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975, as follows:

> 1. ... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.
>
> 2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

22. Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 provides that:

> The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

23. Article 2 of the Inter-American Convention to Prevent and Punish Torture of 1985 provides that:

> Torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.
>
> The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

24. Article 7 (2) (e) of the Rome Statute of the International Criminal Court provides that:

> "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the

[28] See Nigel Rodley, "The definition(s) of torture in international law", *Current Legal Problems*, vol. 55, No. 1 (December 2002), p. 467.

accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.[29]

Torture has not been given a definition within the text of article 7 of the International Covenant on Civil and Political Rights or any of the main regional human rights instruments, but has been applied and interpreted extensively by the respective oversight bodies.[30]

C. Distinction between torture and "other" cruel, inhuman or degrading treatment or punishment

25. Although all major universal and regional human rights treaties expressly prohibit cruel, inhuman and degrading treatment or punishment, none of them offers a definition of the term as a whole or of its components (namely, "cruel", "inhuman" and "degrading").[31] The concept has been interpreted and applied in a wide range of cases before judicial and quasi-judicial bodies, albeit with varying precision. Thus, for example, the Inter-American Commission on Human Rights indicated that "inhumane treatment includes unjustifiable conduct that causes severe physical, mental or psychological pain or suffering, and that treatment or punishment of an individual may be degrading if he is severely humiliated in front of others or he is compelled to act against his wishes or conscience",[32] whereas the Human Rights Committee did not "consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied".[33]

26. While the distinction between torture and other cruel, inhuman or degrading treatment or punishment will always depend on the applicable treaty definition, the generic observations set out in the paragraphs below can be made.

27. First, both torture and any other form of cruel, inhuman or degrading treatment or punishment are absolutely prohibited and therefore cannot be justified under any circumstances. The broad scope of this prohibition covers a wide variety of more or less aggravated forms of inflicting pain or suffering, all of which are conclusively unlawful but only some of which qualify as torture. The term "pain or suffering" encompasses both physical and mental pain and suffering, including humiliation and emotional anguish.

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[29] See also International Criminal Court, *Elements of Crimes* (The Hague, 2011), on the crime against humanity of torture, art. 7 (1) (f); note, however, the elements concerning the war crime of torture in respect of international armed conflict (art. 8 (2) (a) (ii)-1) and of non-international armed conflict (art. 8 (2) (c) (i)-4).

[30] For an overview, see, for example, Association for the Prevention of Torture and Centre for Justice and International Law, *Torture in International Law*. See also Office of the United Nations High Commissioner for Human Rights (OHCHR), "Interpretation of torture in the light of the practice and jurisprudence of international bodies", 2011.

[31] See Convention against Torture, art. 16, International Covenant on Civil and Political Rights, art. 7, European Convention on Human Rights, art. 3 (omits the word "cruel"), American Convention on Human Rights, art. 5 (2), and African Charter on Human and Peoples' Rights, art. 5.

[32] Inter-American Commission on Human Rights, report No. 92/05, case 12.418, "*Michael Gayle* v. *Jamaica*, Merits, 24 October 2005", para. 61.

[33] Human Rights Committee, general comment No. 20 (1992), para. 4.

28. Second, torture constitutes an aggravated form of cruel, inhuman or degrading treatment or punishment.[34] "Aggravation" here refers to aggravated wrong, which does not necessarily require aggravated pain and suffering. As pointed out by the Inter-American Court of Human Rights, "the violation of an individual's right to physical and mental integrity has different levels that range from torture to other types of abuse or cruel, inhuman or degrading treatment, the physical and mental consequences of which vary in intensity according to factors that are endogenous and exogenous to the individual (such as, duration of the treatment, age, sex, health, context, and vulnerability), which must be analysed in each specific situation".[35]

29. Third, while the notion of cruel, inhuman or degrading treatment or punishment may include a wide range of actions amounting to unlawful infliction of pain or suffering, the aggravated threshold of torture requires a number of additional criteria that may vary slightly depending on the applicable treaty definition and its interpretation by the relevant oversight bodies. Thus, according to the Inter-American Court of Human Rights, "an act constitutes torture when the ill-treatment: (a) is intentional; (b) causes severe physical or mental suffering, and (c) is committed with a specific purpose or objective".[36] Similarly, the African Commission on Human and Peoples' Rights has interpreted torture as "the intentional and systematic infliction of physical or psychological pain and suffering in order to punish, intimidate or gather information" and usefully pointed out that torture could be carried out by "State or non-State actors at the time of exercising control over such person or persons".[37] According to the European Court of Human Rights, torture, as opposed to other inhuman and degrading treatment, involves "deliberate inhuman treatment causing very serious and cruel suffering".[38] Both the European Court and the African Commission have used article 1 of the Convention against Torture as a reference point for defining torture for the purposes of the European Convention on Human Rights and the African Charter on Human and Peoples' Rights,[39] whereas inter-American bodies have tended to refer to the Inter-American Convention to Prevent and Punish Torture.[40]

30. As a previous mandate holder has clarified, "torture constitutes such a horrible assault on the dignity of a human being because the torturer deliberately inflicts severe pain or suffering on a powerless victim for a specific purpose, such as extracting a confession or information from the victim" (A/HRC/13/39, para. 60; see also A/63/175, para. 50). The distinguishing factor between torture and other cruel, inhuman or degrading treatment or punishment "is not the intensity of the

[34] Convention against Torture, art. 16, and Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1 (2). See also Inter-American Commission on Human Rights, report No. 92/05, case 12.418, para. 62; and European Court of Human Rights, *Selmouni v. France* (application No. 25803/94), Judgment of 28 July 1999, para. 96.

[35] Inter-American Court of Human Rights, *Lysias Fleury et al. v. Haiti*, Judgment of 23 November 2011, para. 73.

[36] Ibid., para. 72. See also Inter-American Commission on Human Rights, "*Gayle v. Jamaica*, Merits", para. 62.

[37] African Commission on Human and Peoples' Rights, communication No. 279/03-296/05, "Sudan Human Rights Organization and Centre on Housing Rights and Evictions v. Sudan", 27 May 2009, para. 156.

[38] European Court of Human Rights, *Selmouni v. France*, Judgment of 28 July 1999, para. 96.

[39] See, for example, European Court of Human Rights, *Salman v. Turkey* (application No. 21986/93), Judgment of 27 June 2000, para. 114, and *Selmouni v. France*, Judgment of 28 July 1999, para. 97; and African Commission on Human and Peoples' Rights, communication No. 279/03-296/05, para. 156.

[40] See, for example, Inter-American Court of Human Rights, *Fernández Ortega et al. v. Mexico*, Judgment of 30 August 2010, paras. 77 and 120, and *Bueno-Alves v. Argentina*, Judgment of 11 May 2007, para. 78.

suffering inflicted, but rather the purpose of the conduct, the intention of the perpetrator and the powerlessness of the victim" (A/HRC/13/39, para. 60).[41] Indeed, "all purposes listed in Article 1 CAT, as well as the TP [*travaux préparatoires*] of the Declaration and the Convention, refer to a situation where the victim of torture is a detainee or a person 'at least under the factual power or control of the person inflicting the pain or suffering', and where the perpetrator uses this unequal and powerful situation to achieve a certain effect, such as the extraction of information, intimidation, or punishment".[42]

31. Building and further elaborating on these observations, the Special Rapporteur concludes that it is the deliberate instrumentalization of the pain or suffering inflicted on a powerless person as a vehicle for achieving a particular purpose, even if exclusively for the sadistic gratification of the perpetrator, which is the essence of torture. For the purposes of the present report, "powerlessness" means that someone is overpowered, in other words, has come under the direct physical or equivalent control of the perpetrator and has lost the capacity to resist or escape the infliction of pain or suffering. Even though the text of article 1 of the Convention against Torture suggests that the range of purposes capable of qualifying an act as torture is limited, the specifically listed purposes — interrogation, punishment, intimidation, coercion or discrimination of any kind — are phrased so broadly that it is difficult to envisage a realistic scenario of purposeful ill-treatment against a powerless person that would escape the definition of torture. As a matter of generic concept, therefore, the definition of torture does not necessarily depend on the precise purpose or intensity of the inflicted pain or suffering, but on the intentionality and purposefulness of that infliction in conjunction with the powerlessness of the victim.

32. Thus, while torture always requires the intentional and purposeful infliction of pain or suffering on a powerless person, other forms of cruel, inhuman or degrading treatment or punishment can also comprise the infliction of pain or suffering without deliberate intention (for example, as an expected or unexpected incidental effect) or without instrumentalizing such pain and suffering for a particular purpose, and can include the unnecessary, excessive or otherwise unlawful use of force against persons who are not powerless, for example, in situations of self-defence, arrest or crowd control.[43] The transition from "other" cruel, inhuman or degrading treatment or punishment to torture is illustrated in *Corumbiara v. Brazil*, in which the Inter-American Commission on Human Rights first noted that "the police used excessive, unnecessary, and disproportionate force against the workers, thereby injuring over fifty of them" and then pointed out that "after bringing the situation entirely under control, the State agents submitted the workers to beatings, humiliation, and inhuman and degrading treatment", concluding that, once Brazil had "gained full control of the situation", its use of force against the workers amounted to torture.[44]

33. In sum, in the view of the Special Rapporteur, while the notion of cruel, inhuman or degrading treatment or punishment includes essentially any unlawful

[41] See also Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture: a Commentary* (Oxford, Oxford University Press, 2008), pp. 76-77.

[42] Manfred Nowak, "What practices constitute torture? US and UN standards", *Human Rights Quarterly*, vol. 28, No. 4 (November 2006), p. 832, citing J. Herman Burgers and Hans Danelius, *The United Nations Convention against Torture: a Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Leiden, Martinus Nijhoff, 1988), p. 120. See also Rome Statute of the International Criminal Court, art. 7 (2) (e).

[43] Nowak and McArthur, *The United Nations Convention against Torture: a Commentary*, p. 558. See also E/CN.4/2006/6, para. 38.

[44] Inter-American Commission on Human Rights, report No. 32/04, case 11.556, "*Corumbiara v. Brazil*, Merits, 11 March 2004", paras. 226 and 228.

infliction of pain and suffering by State agents, the aggravated threshold of torture is always reached when, additionally, severe pain or suffering is intentionally and purposefully inflicted on a powerless person. Depending on the applicable treaty definition and its contemporary interpretation by the relevant bodies, either the aggravated threshold of torture may not require that the inflicted pain and suffering be "severe", or the interpretation of the requirement of severity may have evolved to significantly lower the relevant threshold.[45]

D. Extra-custodial scope of the prohibition

34. Mandate holders have consistently maintained that, conceptually, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is not confined to acts carried out against persons deprived of their liberty, but also covers excessive police violence, such as during arrest and the policing of assemblies, or even torture and other cruel, inhuman or degrading treatment or punishment by acquiescence, namely, when States violate their due diligence obligation to combat ill-treatment at the hands of non-State actors, including harmful traditional practices, such as female genital mutilation, domestic violence and trafficking in human beings (A/HRC/13/39, summary. See also A/HRC/28/68/Add.4, para. 27 (protests); A/HRC/31/57, paras. 51-53 (sexual violence); E/CN.4/2006/6, para. 38 (police powers); A/HRC/13/39, para. 61 (arrests); and E/CN.4/1997/7, paras. 122-123 (police brutality)). Similarly, in reference to extra-custodial settings, the Human Rights Council has expressed concern about the use of torture and cruel, inhuman or degrading treatment or punishment against persons exercising their freedoms of peaceful assembly, of expression and of association in all regions of the world (see Human Rights Council resolution 25/38).

35. Indeed, none of the universal or regional human rights treaties prohibiting torture and other cruel, inhuman or degrading treatment or punishment require deprivation of liberty as a requisite element of torture or other ill-treatment. Even article 7 of the Rome Statute of the International Criminal Court (crimes against humanity), which in its definition of torture refers to the victim as being "in the custody or under the control of the accused", makes no such requirement in relation to other ill-treatment. Similarly, the *travaux préparatoires* to the Convention against Torture suggest that "detention and similar direct control was meant only to constitute a precondition for the qualification of torture" and not in relation to other cruel, inhuman or degrading treatment or punishment.[46]

36. Thus, while the generic concept of cruel, inhuman or degrading treatment or punishment clearly is not limited to ill-treatment inflicted on persons deprived of their liberty, the concept of torture requires that the perpetrator exercise direct physical or equivalent control over the victim and that the victim is incapable of resisting or escaping the infliction of pain or suffering ("powerlessness"). In principle, therefore, the universal customary prohibition of cruel, inhuman or degrading treatment or punishment and, in situations of powerlessness, of torture are fully applicable to the extra-custodial use of force by State agents.

[45] See OHCHR, "Interpretation of Torture", 2011, p. 8; European Court of Human Rights, *Selmouni v. France*, Judgment of 28 July 1999, para. 101; and Inter-American Court of Human Rights, *Cantoral-Benavides v. Peru*, Judgment of 18 August 2000 (Merits), para. 99.

[46] Nowak and McArthur, *The United Nations Convention against Torture: a Commentary*, pp. 566-567.

E. Extra-custodial interpretation of the prohibition

37. As the below examples illustrate, the jurisprudence of universal and regional oversight mechanisms confirms the applicability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the extra-custodial use of force and provides guidance as to how the prohibition interrelates with the use of force principles.

Committee against Torture

38. The Committee against Torture has repeatedly held that police brutality and excessive use of force outside the context of detention can fall within its purview (for example, A/50/44, para. 126, CAT/C/VEN/CO/3-4, para. 12, CAT/C/TUR/CO/4, para. 15, and CAT/C/KOR/CO/3-5, para. 13).[47] In *V.L. v. Switzerland*, a case involving multiple rapes, the Committee noted that "the complainant was clearly under the physical control of the police even though the acts concerned were perpetrated outside formal detention facilities" (CAT/C/37/D/262/2005, annex, para. 8.10). It found that State agents had inflicted severe pain and suffering on her, for purposes such as interrogation, intimidation, punishment, humiliation and discrimination based on gender, and concluded that "the sexual abuse by the police in this case constitutes torture even though it was perpetrated outside formal detention facilities" (ibid.).

Inter-American Court of Human Rights and Inter-American Commission on Human Rights

39. Similarly, in the case of *Rosendo Cantú et al. v. Mexico*, the Inter-American Court of Human Rights considered "that rape may constitute torture even when it consists of a single act or takes place outside State facilities ... because the objective and subjective elements that define an act as torture do not refer to the accumulation of acts or to the place where the act is committed, but rather to the intention, the severity of the suffering and the purpose of the act".[48] The Inter-American Commission on Human Rights also regarded as torture the intentional, violent beating of a person prior to arrest.[49]

European Court of Human Rights

40. In *Cestaro v. Italy* and *Bartesaghi Gallo and Others v. Italy*, the European Court of Human Rights found that the violent punching, kicking and beating with rubber truncheons of antiglobalization protestors amounted to torture. The Court noted that although none of the victims showed violence or resistance, and although all of them were manifestly unarmed, asleep or sitting with their hands raised above their heads, the police systematically and indiscriminately subjected each of them to violent beatings, intentionally inflicting severe physical and psychological suffering for purposes of retaliation and humiliation through the use of excessive, indiscriminate and manifestly disproportionate force.[50]

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[47] See also Nowak and McArthur, *The United Nations Convention against Torture: a Commentary*, pp. 567-568.

[48] Inter-American Court of Human Rights, *Rosendo Cantú et al. v. Mexico*, Judgment of 31 August 2010, para. 118.

[49] Inter-American Commission on Human Rights, "*Gayle v. Jamaica*, Merits", paras. 59-64.

[50] European Court of Human Rights, *Cestaro v. Italy* (application No. 6884/11), Judgment of 7 April 2015, paras. 170-190; and *Bartesaghi Gallo and Others v. Italy* (application Nos. 12131/13 and 43390/13), Judgment of 22 June 2017, paras. 114 and 117.

41. The Court has also made numerous findings of inhuman or degrading treatment in cases involving the unnecessary or excessive use of force in the context of demonstrations.[51] In *Abdullah Yaşa and Others v. Turkey*, the Court found the launch of a tear gas grenade along a direct flat trajectory aimed towards protestors to be contrary to article 3 of the European Convention on Human Rights because it was not "proportionate to the aim pursued, namely to disperse a non-peaceful gathering" and because the severity of the resulting injuries to the applicant's head were not "commensurate with the strict use by the police officers of the force necessitated by his behaviour".[52]

42. Similarly, in the case of *Anzhelo Georgiev and Others v. Bulgaria*, involving the use of electrical discharge weapons in a police raid, the Court found that the use of such weapons had not been shown to be necessary and proportionate in the circumstances and therefore violated article 3 of the European Convention on Human Rights.[53] The Court indicated that "Article 3 does not prohibit the use of force in certain well-defined circumstances. However, such force may be used only if indispensable and must not be excessive", labelling this a "strict proportionality" test.[54]

43. In *Rizvanov v. Azerbaijan*, the Court held that "when a person is confronted by the police or other agent of the State, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention".[55] It is not entirely clear how this approach would apply to the use of force that, while being necessary and proportionate for a lawful purpose, might inflict incidental harm on innocent bystanders. In cases in which innocent bystanders had been harmed by force that was otherwise deemed necessary and proportionate in the circumstances, the Court does not appear to have contemplated a qualification as cruel, inhuman or degrading treatment or punishment.[56]

44. In *Selçuk and Asker v. Turkey*, the Court found the unjustified destruction of private homes to be inhuman treatment because it was "premeditated and carried out contemptuously and without respect for the feelings of the applicants", who "had to stand by and watch the burning of their homes" while inadequate precautions were taken to ensure their safety and no subsequent assistance was provided.[57]

45. Finally, the Court repeatedly found States to have violated their duty to protect persons from torture and other inhuman or degrading treatment by, for example, failing to provide an adequate legal framework against rape[58] or to protect

[51] See, for example, European Court of Human Rights, *Muradova v. Azerbaijan* (application No. 22684/05), Judgment of 2 April 2009, *Güler and Öngel v. Turkey* (application Nos. 29612/05 and 30668/05), Judgment of 4 October 2011, *Tahirova v. Azerbaijan* (application No. 47137/07), Judgment of 3 October 2013; and *Rizvanov v. Azerbaijan* (application No. 31805/06), Judgment of 17 April 2012.

[52] European Court of Human Rights, *Abdullah Yaşa and Others v. Turkey* (application No. 44827/08), Judgment of 16 July 2013, paras. 48 and 50.

[53] European Court of Human Rights, *Anzhelo Georgiev and Others v. Bulgaria* (application No. 51284/09), Judgment of 30 September 2014, para. 78.

[54] Ibid., para. 66.

[55] European Court of Human Rights, *Rizvanov v. Azerbaijan*, Judgment of 17 April 2012, para. 49. See also *Anzhelo Georgiev and Others v. Bulgaria*, Judgment of 30 September 2014, paras. 66 and 78.

[56] See, for example, European Court of Human Rights, *Finogenov and Others v. Russia* (application Nos. 18299/03 and 27311/03), Judgment of 20 December 2011; and *Andronicou and Constantinou v. Cyprus* (application No. 25052/94), Judgment of 9 October 1997.

[57] European Court of Human Rights, *Selçuk and Asker v. Turkey* (application Nos. 23184/94 and 23185/94), Judgment of 24 April 1998, paras. 77-78.

[58] European Court of Human Rights, *M.C. v. Bulgaria* (application No. 39272/98), Judgment of 4 December 2003.

applicants from a real and immediate risk of ill-treatment at the hands of an abusive family member.[59]

IV. Application of the prohibition to the extra-custodial use of force

A. Extra-custodial use of force as cruel, inhuman or degrading treatment or punishment

46. Case law thus suggests that the criteria determining whether the extra-custodial use of force amounts to cruel, inhuman or degrading treatment or punishment are closely aligned with the use of force principles. In principle, any use of force by State agents exceeding what is necessary and proportionate in the circumstances to achieve a lawful purpose is regarded as an attack on human dignity amounting to cruel, inhuman or degrading treatment or punishment, irrespective of whether that excess occurred intentionally or inadvertently. The precise characterization of the relevant ill-treatment as cruel, inhuman, degrading or a combination thereof will depend on the particular characteristics and circumstances of the case but cannot prevent the unlawfulness of the act. Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations increases the risk of unnecessary or disproportionate force being used and, in principle, breaches the State's obligation to prevent cruel, inhuman or degrading treatment or punishment.[60]

B. Extra-custodial use of force as aggravated cruel, inhuman or degrading treatment or punishment or torture

47. The legal equation changes fundamentally when it comes to intentional and purposeful infliction of pain or suffering on a powerless person. Intentionality and purposefulness involve the deliberate instrumentalization of the pain or suffering inflicted on a powerless person as a vehicle for achieving a particular purpose (for example, coercion, intimidation, punishment, discrimination or sadistic gratification), as opposed to the infliction of pain and suffering as an inevitable side effect of an act pursuing a different purpose (for example, a medical intervention, effecting an arrest or repelling an attack). Powerlessness means that the victim is under the direct physical or equivalent control of the perpetrator and has lost the capacity to resist or escape the infliction of pain or suffering. In such circumstances, there can be no justification for the intentional and purposeful infliction of pain or suffering, regardless of whether, under the relevant treaty definition, it qualifies as torture or "other" cruel, inhuman or degrading treatment or punishment. In the view of the Special Rapporteur, the deliberate instrumentalization of pain or suffering, in conjunction with the powerlessness of the victim, are the very essence of torture and of the fundamental attack on human dignity it represents. Thus, notwithstanding any additional elements that may be required for a formal qualification as "torture" under the applicable treaty definition, any extra-custodial use of force that involves the intentional and purposeful infliction of pain or suffering on a powerless person as a vehicle for achieving a particular purpose will always amount to an aggravated form of cruel, inhuman or degrading treatment or punishment, irrespective of

[59] European Court of Human Rights, *Opuz v. Turkey* (application No. 33401/02), Judgment of 9 June 2009.

[60] On positive obligations, see Association for the Prevention of Torture and Centre for Justice and International Law, *Torture in International Law*.

considerations of lawful purpose, necessity or proportionality and irrespective of its qualification as torture under the applicable treaty definition.

V. Application of the prohibition to weapons and other means and methods

A. Relevance of the prohibition

48. While the lawfulness of specific weapons and other means of warfare has long been regulated in international humanitarian law, it has more recently also become an issue of consideration under human rights law with regard to the wider context of law enforcement.[91] It is increasingly recognized that certain weapons and other means of law enforcement may be inherently cruel, inhuman or degrading by nature or design and, accordingly, that their use, production and trade would be incompatible with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (General Assembly resolution 66/150, para. 24, and resolution 68/156, para. 30).[92] Ever since the establishment of the mandate of the Special Rapporteur, mandate holders have expressed concern in this respect, starting in the very first report of the Special Rapporteur to the Commission on Human Rights, in 1986 (E/CN.4/1986/15, paras. 120-121), but most notably in a report prepared at the express request of the Commission in 2003 (E/CN.4/2003/69).

49. Building on this body of work, the focus of the present report is on the relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment for the extra-custodial use of weapons and other means of employing force in law enforcement (hereafter "weapons"). Given that any weapon can be used in an unlawful manner and that the lawfulness of such use depends on the use of force principles outlined above, a distinction should be made between weapons that have to be regarded as inherently cruel, inhuman or degrading and those carrying an increased risk of being used for torture and other cruel, inhuman or degrading treatment or punishment. States' obligations under human rights law relating to the legal review of weapons will also be considered in the present report.

B. Inherently cruel, inhuman or degrading weapons

50. It would exceed the scope of the present report to try to provide a comprehensive list of weapons that would have to be regarded as inherently cruel, inhuman or degrading. Nevertheless, on the basis of the extensive and progressive work produced by previous mandate holders, other United Nations mechanisms, States, academic experts and civil society, the below generic observations can be made.

51. In the view of the Special Rapporteur, a weapon has to be considered as inherently cruel, inhuman or degrading if it is either specifically designed or of a nature (that is, of no other practical use than) to: (a) employ unnecessary, excessive or otherwise unlawful force against persons; or (b) inflict pain and suffering on

[91] See Basic Principles, principles 1-3. See also Stuart Casey-Maslen, ed., *Weapons Under International Human Rights Law* (Cambridge, United Kingdom, Cambridge University Press, 2014).

[92] See also European Council Regulation No. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, notably articles 3 and 4, and Omega Research Foundation and Amnesty International, "The human rights impact of less lethal weapons and other law enforcement equipment", April 2015.

powerless individuals. In extra-custodial settings governed by the law enforcement paradigm, examples of inherently cruel, inhuman or degrading weapons include: (a) spiked batons or shields, and any other type of weapon or ammunition specifically designed or of a nature to unnecessarily aggravate wounds and suffering; (b) stun belts and any other type of body-worn device capable of delivering electric shocks through remote control, given that they cause not only physical pain but also constant emotions of extreme anguish and humiliation, as well as the complete subjugation of the victim irrespective of physical distance; and (c) certain unnecessarily painful, injurious or humiliating devices designed to restrain persons in the process of arrest, such as thumb- and finger-cuffs and -screws.[63]

C. Weapons involving a high risk of torture and other cruel, inhuman or degrading treatment or punishment

52. Weapons that might not be inherently cruel, inhuman or degrading may nonetheless carry significant risks of being used in a manner contrary to the prohibition of torture and cruel, inhuman or degrading treatment or punishment, thus placing particular emphasis on the requirement of precautions.

53. In the view of the Special Rapporteur, such weapons include certain types of firearms and ammunition, such as fully automatic weapons and high-calibre and high-energy expanding bullets, all of which carry a significant risk of causing unnecessary or excessive injury. They also include a range of "less lethal" weapons, such as certain types of kinetic impact projectiles, electrical discharge weapons, chemical irritants, water cannons and disorientation devices.[64]

54. In principle, the current trend towards replacing firearms with "less lethal" incapacitating weapons is positive in that it promotes a differentiated use of force and aims to minimize harm.[65] At the same time, the widespread availability of incapacitating weapons also tends to lower the threshold for the use of force and entails a significant risk of "overuse" in situations in which the desired purpose could reasonably have been achieved through less coercive, less dangerous and less harmful means. Moreover, although "less lethal" weapons are designed to incapacitate while avoiding lethal outcomes, they are also specifically designed to inflict pain or suffering as a means of repelling or otherwise coercing the targeted persons. For example, several bodies and specialized organizations have specifically highlighted the risk of cruel, inhuman or degrading treatment or punishment associated with the extra-custodial use of electrical discharge weapons delivering electric shocks through projectiles (for example, tasers), or upon direct physical contact (for example, batons, shields or helmets).[66]

55. Another issue arising with regard to certain "less lethal" weapons is their indiscriminate effects, which make it difficult to restrict the use of force and the resulting harm as required by the principles of necessity and proportionality, particularly in the presence of innocent bystanders (for example, in crowd control or hostage-taking).[67] While the indiscriminate nature of a weapon alone does not

[63] See European Council Regulation No. 1236/2005 and amendments. See also Omega Research Foundation and Amnesty International, "The human rights impact of less lethal weapons", pp. 8-9.

[64] See Physicians for Human Rights and International Network of Civil Liberties Organizations, "Lethal in disguise: the health consequences of crowd-control weapons", 2016.

[65] Basic Principles, principle 2.

[66] CAT/C/AUS/CO/4-5, para. 13; CAT/C/USA/CO/3-5, para. 27; Council of Europe, "20th general report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", 2010, paras. 69-73; and Neil Corney, "Less lethal systems and the appropriate use of force", paper prepared for the Omega Research Foundation, March 2011, p. 6.

[67] See also Omega Research Foundation and Amnesty International, "The human rights impact of less lethal weapons", pp. 17-18 and 26; and Human Rights Council resolution 25/38, para. 9.

necessarily make it cruel, inhuman or degrading, it may do so in conjunction with the gravity of its effects (for example, certain kinetic impact projectiles) or with the circumstances in which it is being used (for example, tear gas in closed confinements).

56. Furthermore, certain "less lethal" weapons may have foreseeable long-term or other effects, which must be considered when assessing the proportionality of their use, such as the high risk of serious head injury arising when persons collapse uncontrollably after being targeted with electrical discharge weapons or the humiliating effect of the use of dyes or malodorants.[68]

57. Finally, any extra-custodial use of an otherwise permissible weapon, irrespective of its lethal or less lethal design, in order to intentionally and purposefully inflict pain or suffering on a powerless person, always amounts to an aggravated form of cruel, inhuman or degrading treatment or punishment or even torture.

D. Duty to regulate and review

58. States must take effective legislative, administrative, judicial or other measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment from occurring within their jurisdiction.[69] In the present context, this means that States must regulate the extra-custodial use of force and establish other adequate mechanisms to ensure that State agents are trained, equipped and instructed so as to prevent torture and other cruel, inhuman or degrading treatment or punishment in law enforcement operations.[70]

59. Given that States must prevent the use of inherently cruel, inhuman or degrading weapons and of lawful weapons in a manner contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, they necessarily have a derived duty, irrespective of treaty obligations, to regulate and review the development, acquisition, trade and use of weapons. Most notably, this includes an obligation to determine whether the employment of a weapon would, in some or all circumstances, violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.[71] This duty is particularly significant in the light of the constant emergence and deployment of new technologies for use in law enforcement operations, including "less lethal", remotely controlled and increasingly autonomous systems.

60. The duty to conduct legal reviews applies to weapons in the broadest sense, as well as the manner in which they are intended or reasonably expected to be used. A meaningful weapons review involves experts from various disciplines, given that it requires an examination of all relevant information regarding the weapon, such as its technical description, its performance and reliability, its environmental and medical impact and, most importantly for the present context, the nature and

[68] On the use of dyes or malodorants, see Physicians for Human Rights and International Network of Civil Liberties Organizations, "Lethal in disguise", pp. 57-61.

[69] Convention against Torture, arts. 2 and 16.

[70] See Association for the Prevention of Torture and Centre for Justice and International Law, *Torture in International Law*.

[71] See also African Commission on Human and Peoples' Rights, Robben Island Guidelines, 2002, art. 14; and Stuart Casey-Maslen, Neil Corney and Abi Dymond-Bass, "The review of weapons under international humanitarian law and human rights law", in Casey-Maslen (ed.), *Weapons Under International Human Rights Law*, pp. 424-425. See also, mutatis mutandis, the customary obligation codified in article 36 of Additional Protocol I to the 1949 Geneva Conventions, on means and methods of warfare, and, in this context, ICRC, "A guide to the legal review of new weapons, means and methods of warfare: measures to implement article 36 of Additional Protocol I of 1977", January 2006.

severity of the physical, mental and emotional injury, pain or suffering likely to be inflicted.[72]

61. Finally, it has become apparent that an international response is required with respect to the human rights issues raised by "less lethal" weapons, with a view to bringing about detailed, practical guidance on the human rights-compatible use of such weapons. Accordingly, in their joint report issued in 2016 on the management of peaceful protest, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions recommended that the United Nations High Commissioner for Human Rights "convene an expert group to examine the application of the international human rights framework to less-lethal weapons and unmanned systems for law enforcement purposes, including with a focus on their use in the context of assemblies" (A/HRC/31/66, para. 67 (i)).

VI. Conclusions

62. **In the present report, the Special Rapporteur examined whether and in which circumstances the extra-custodial use of force by State agents amounts to torture or other cruel, inhuman or degrading treatment or punishment. The Special Rapporteur's substantive conclusions can be summarized as follows:**

(a) **Today, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is universally recognized as a core principle of international law that is binding upon all States, irrespective of their treaty obligations. The prohibition of torture is also one of the few norms of customary international law that is universally recognized as having attained peremptory status (jus cogens);**

(b) **The prohibition of torture and other cruel, inhuman or degrading treatment or punishment not only protects persons deprived of their liberty, but also applies in extra-custodial settings;**

(c) **Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment. Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State's positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction;**

(d) **Any extra-custodial use of force that is intended to inflict pain or suffering on a "powerless" person (that is, a person who is under direct physical or equivalent control and is unable to escape or resist) as a vehicle for achieving a particular purpose amounts to an aggravated form of cruel, inhuman or degrading treatment or punishment, irrespective of considerations of lawful purpose, necessity and proportionality and irrespective of what else, if**

[72] See Defence Scientific Advisory Council Subcommittee on the Medical Implications of Less-Lethal Weapons, "Statement on the medical implications of use of the Taser X26 and M26 less-lethal systems on children and vulnerable adults", amended, 27 January 2012; Abi Dymond, "Police use of taser in England and Wales, 2004-2014", unpublished PhD thesis, 2016; and Aaron Sussman, "Shocking the conscience: what police tasers and weapon technology reveal about excessive force law", *UCLA Law Review*, vol. 59 (2012), p. 1,344.

anything, might be required for such use of force to constitute torture under the respective treaty instruments;

(e) States must regulate the extra-custodial use of force and must ensure that all of their agents are trained, equipped and instructed so as to prevent any act of torture and cruel, inhuman or degrading treatment or punishment within their jurisdiction. This includes not only the development of sufficiently clear guidance on the use of force and weapons, but also the systematic legal review of weapons, including other means of deploying force and "less lethal" weapons;

(f) A weapon must be considered as inherently cruel, inhuman or degrading and, therefore, as absolutely prohibited if it is either specifically designed or of a nature (that is, of no other practical use than): (a) to employ unnecessary, excessive or otherwise unlawful force against persons; or (b) to intentionally and purposefully inflict pain and suffering on powerless individuals. Weapons that might not be inherently cruel, inhuman or degrading may nonetheless carry significant risks of being used in a manner contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, thus placing particular emphasis on the requirement of precautions;

(g) Wherever there is reasonable ground to believe that extra-custodial force amounting to torture or other cruel, inhuman or degrading treatment or punishment has been used, States have a duty to conduct a prompt and impartial investigation in order to ensure full accountability for any such act, including, as appropriate, administrative, civil and criminal accountability, and to ensure that victims receive adequate redress and rehabilitation.

VII. Recommendations

63. On the basis of the above conclusions, the Special Rapporteur offers the below recommendations to States with a view to strengthening their capacity to ensure the effective prevention of and accountability for torture and other cruel, inhuman or degrading treatment or punishment, not only in custodial settings, but also in extra-custodial settings.

A. National law and regulations

64. States should ensure that their national law prohibits torture and other cruel, inhuman or degrading treatment or punishment in all circumstances, including extra-custodial settings. Thus, the definition of torture and other cruel, inhuman or degrading treatment or punishment in national criminal law and other relevant laws and regulations should not be confined to acts carried out against persons deprived of their liberty, but should also apply in extra-custodial settings.

65. In particular, as far as the extra-custodial use of force is concerned, States should ensure that their laws and regulations, including rules of engagement and similar instruments guiding and constraining the use of force in operational practice:

(a) Absolutely prohibit and prevent any extra-custodial use of force by State agents intentionally and purposefully inflicting pain or suffering on powerless persons, irrespective of considerations of lawful purpose, necessity or proportionality;

(b) Absolutely prohibit and prevent the development, production, trade and use of weapons and other means of deploying force that are inherently cruel, inhuman or degrading;

(c) Require that any other extra-custodial use of force by State agents: (i) pursue a lawful purpose; (ii) be strictly necessary for the achievement of that purpose; (iii) cause no harm that would be disproportionate to the benefit of achieving that purpose and (iv) be planned, prepared and conducted so as to minimize, to the greatest extent possible, the causation of harm.

B. Equipment, training and instructions

66. States should ensure that all law enforcement officials are trained, equipped and instructed so as to prevent any extra-custodial use of force amounting to torture and other cruel, inhuman or degrading treatment or punishment. In particular, States should:

(a) Provide mandatory initial and recurring training and instructions for all law enforcement officials, in both classroom and scenario-based settings, concerning the lawful use of force, weapons and other equipment, as well as in the effective implementation of alternative, non-violent methods and tactics, with a particular focus on preventing any act of torture or other cruel, inhuman or degrading treatment or punishment;

(b) Regularly monitor the effectiveness of such training in preventing torture and other cruel, inhuman or degrading treatment or punishment and other human rights violations;

(c) Equip law enforcement officials with communication devices and protective equipment such as shields, helmets, bulletproof vests and bulletproof means of transportation, with a view to prioritizing the de-escalation of any potential violence and decreasing the need to use weapons of any kind;

(d) Equip law enforcement officials with various types of weapons, ammunition and other means, including "less lethal" incapacitating weapons, with a view to allowing for the differentiated use of force aimed at avoiding or, in any event, minimizing harm and injury.

C. Weapons reviews

67. In the development, procurement or trading of weapons, including other means of deploying force and "less lethal" weapons, States should conduct systematic legal reviews with a view to determining whether the use of such weapons, in some or all circumstances, would violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, or any other obligation under international law, or would significantly increase the risk of such violations occurring.

68. The Special Rapporteur specifically welcomes prohibitions and restrictions introduced on the trade in certain goods that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment by European Council Regulation No. 1236/2005 of 27 June 2005 and encourages other States to take similar initiatives.

69. The Special Rapporteur supports and reiterates the joint recommendation made by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or

arbitrary executions that the United Nations High Commissioner for Human Rights convene an expert group to examine the application of the international human rights framework to "less lethal" weapons and unmanned systems for law enforcement purposes, including with a focus on their use in the context of assemblies.

D. Monitoring, investigation, redress and rehabilitation

70. States should establish effective systems for monitoring and reporting on the use of force, and relevant information should be made accessible to the public, including statistics on when, against whom and through which means force is used and on the resulting harm.

71. For States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a key role in that respect could be assumed by national preventive mechanisms. Although the Optional Protocol does not require States to provide national preventive mechanisms with powers of oversight outside places where persons are deprived of their liberty, nothing in the relevant instruments prevents the extension of their monitoring responsibilities, as a matter of national law, to the use of force in extra-custodial settings.[73]

72. States should systematically include the extra-custodial use of force in their regular reports to international mechanisms, such as the Committee against Torture and the Human Rights Committee (universal periodic review), and encourage international mechanisms, such as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and other special procedures, to examine the issue in their work.

73. Wherever there is reasonable ground to believe that extra-custodial force amounting to torture or other cruel, inhuman or degrading treatment or punishment has been used, States should conduct a prompt and impartial investigation in order to ensure full accountability for any such act, including, as appropriate, administrative, civil and criminal accountability, and to ensure that victims receive adequate redress and rehabilitation (General Assembly resolution 70/146, paras. 28-31). The Istanbul Protocol is a key resource on best practice in conducting such investigations.[74]

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[73] Examples of national preventive mechanisms monitoring the extra-custodial use of force are those of Austria (Austrian Ombudsman Board, "Annual report on the activities of the Austrian national preventive mechanism, 2014", international version, June 2015, p. 2, and "Annual report, 2015", international version, October 2016, pp. 208, 218 and 235, on police conduct during demonstrations and raids) and Brazil (2014 investigation into the use of force during a demonstration, available from http://apt.ch/en/blog/world-cup-preventing-torture-in-rio-de-janeiro/#.WU1CmpDyvIW).

[74] *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, Professional Training Series No. 8/Rev.1 (United Nations publication, Sales No. E.04.XIV.3).